

3

COMMERCIAL FISHING INDUSTRY VESSEL SAFETY

4. M 53:103-40

Commercial Fishing Industry Vessel... **HEARING**

BEFORE THE

SUBCOMMITTEES ON
COAST GUARD AND NAVIGATION
AND FISHERIES MANAGEMENT

OF THE

COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

IMPLEMENTATION OF THE COMMERCIAL FISHING IN-
DUSTRY VESSEL SAFETY ACT OF 1988 REGARDING
RULES ON LIFESAVING AND FIREFIGHTING EQUIP-
MENT AND DESIGN REQUIREMENTS FOR CERTAIN
FISHING VESSELS

JUNE 15, 1993

Serial No. 103-40

Printed for the use of the Committee on Merchant Marine and Fisheries



SUPERINTENDENT OF DOCUMENTS
CONGRESSIONAL SALES OFFICE

DEC 2 1993

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1993

U.S. GOVERNMENT PRINTING OFFICE

71-730

WASHINGTON : 1993

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-041638-8

83

COMMERCIAL FISHING INDUSTRY VESSEL SAFETY

4. M 53:103-40

Commercial Fishing Industry Vessel... **HEARING**

BEFORE THE

SUBCOMMITTEES ON
COAST GUARD AND NAVIGATION
AND FISHERIES MANAGEMENT

OF THE

COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

IMPLEMENTATION OF THE COMMERCIAL FISHING IN-
DUSTRY VESSEL SAFETY ACT OF 1988 REGARDING
RULES ON LIFESAVING AND FIREFIGHTING EQUIP-
MENT AND DESIGN REQUIREMENTS FOR CERTAIN
FISHING VESSELS

JUNE 15, 1993

Serial No. 103-40

Printed for the use of the Committee on Merchant Marine and Fisheries



SUPERINTENDENT OF DOCUMENTS
RECORDS

DEC 2 1993

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1993

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1993

71-730

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-041638-8

CONTENTS

	Page
Hearing held June 15, 1993.....	1
Statement of:	
Adler, William A., Executive Director, Massachusetts Lobstermen's Association, Inc.	16
Prepared statement.....	117
Anderson, Wilma, Executive Director, Texas Shrimp Association.....	15
Prepared statement.....	105
Barry, Peggy, Vice Chair, Commercial Fishing Industry Vessel Advisory Committee (prepared statement).....	135
Bateman, Hon. Herbert, a U.S. Representative from Virginia.....	6
Coble, Hon. Howard, a U.S. Representative from North Carolina, and Ranking Minority Member, Subcommittee on Coast Guard and Navigation.....	2
Dujenski, Alan, Marine Safety Specialist, Pettit-Morrey Company.....	11
Prepared statement.....	64
Easley, Joe, Chairman, Coast Guard Commercial Fishing Industry Advisory Committee.....	9
Prepared statement.....	58
Fields, Hon. Jack, a U.S. Representative from Texas, and Ranking Minority Member, Committee on Merchant Marine and Fisheries.....	7
Green, David L., Naval Architect and Marine Engineer.....	13
Prepared statement.....	92
Hamburg, Hon. Dan, a U.S. Representative from California.....	5
Henn, Adm. Arthur E., Chief, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard.....	7
Prepared statement.....	38
Hughes, Hon. William J., a U.S. Representative from New Jersey.....	3
Manton, Hon. Thomas J., a U.S. Representative from New York, and Chairman, Subcommittee on Fisheries Management.....	3
Tauzin, Hon. Billy, a U.S. Representative from Louisiana, and Chairman, Subcommittee on Coast Guard and Navigation.....	1
Whitfield, Thomas, Pettit-Morrey Company, Seattle, Washington (prepared statement).....	130
Young, Hon. Don, a U.S. Representative from Alaska, and Ranking Minority Member, Subcommittee on Fisheries Management.....	4
Additional material supplied:	
Anderson, Wilma:	
Answers to questions submitted.....	175
Shrimp Industry Oversight Summary Response of the Regulations, Gulf of Mexico Region.....	111
Adler, William A.: Answers to questions from Hon. Billy Tauzin.....	126
Barr, Dan (No. Pacific Gillnet Alliance):	
Alaska Legislative Resolve No. 6.....	152
Form letter to Bill Wright, et al.....	148
Memorandum from Jensen Maritime Consultants Inc. to commercial fishing industry members.....	153
Memorandum of February 18, 1993 to Marine Safety Council.....	155
Memorandum of January 28, 1993, to Marine Safety Council.....	160
Pacific Fisheries Legislative Task Force, Resolution/Position Statement 93-2.....	151
Coast Guard:	
Answers to questions submitted.....	179
Eighth Coast Guard District Fishing Vessel Casualties.....	30
Green, David L.: Answers to questions of Mr. Tauzin and of committee.....	99

	Page
Communications submitted:	
Adler, William A.: Letter of December 9, 1992, to Marine Safety Council...	121
Barr, Dan (No. Pacific Gillnet Alliance): Letter of June 7, 1993, with attachments.....	147
Dujenski, Alan:	
Letter of August 17, 1993, to Hon. W.J. Tauzin and Hon. Thomas J. Manton with answers to questions.....	80
Letter of February 27, 1993, to Marine Safety Council.....	169
Easley, Joe: Letter of July 29, 1993, to Hon. W.J. "Billy" Tauzin and Hon. Tom Manton with answers to questions.....	61
Hiscock, Richard C. (ERE Associates, Ltd.): Letter of June 15, 1993, to Hon. Gerry E. Studds containing comments.....	143
Kelley, Dale A. (Alaska Trollers Assn.): Letter of June 11, 1993, to Repre- sentative Billy Tauzin containing comments.....	138

COMMERCIAL FISHING INDUSTRY VESSEL SAFETY ACT

TUESDAY, JUNE 15, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION, JOINT
WITH SUBCOMMITTEE ON FISHERIES MANAGEMENT, COM-
MITTEE ON MERCHANT MARINE AND FISHERIES,

Washington, DC.

The subcommittees met, pursuant to call, at 2:00 p.m., in room 1334, Longworth House Office Building, Hon. W. J. (Billy) Tauzin (Chairman of the Subcommittee on Coast Guard and Navigation) presiding.

Present: Representatives Tauzin, Hughes, Hutto, Lancaster, Stupak, Pickett, Pallone, Laughlin, Taylor, Coble, Bateman, Fowler, Castle, Inhofe, Hamburg, and Young.

Staff Present: Elizabeth Megginson, Matt Szigety, Catherine Gibbens, Bill Wright, Jim Adams, Greg Lambert, Lori Rosa, Lee Crockett, Sue Waldron, Cyndy Wilkinson, Ed Lee, Rebecca Dye, Margherita Woods, and Jill Brady.

STATEMENT OF THE HON. BILLY TAUZIN, A U.S. REPRESENTATIVE FROM LOUISIANA, AND CHAIRMAN, SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

Mr. TAUZIN. The committee will please come to order. I want to welcome all of you today to this hearing on the implementation of the Commercial Fishing Industry Vessel Safety Act of 1988. That Act required that the Coast Guard adopt rules regarding lifesaving and firefighting equipment that would be carried aboard certain fishing vessels. It also provided authority for the Coast Guard to adopt regulations for certain size vessels detailing design requirements.

We have followed this issue very closely because of our concern about the safety of the men and women in the commercial fishing industry. This industry has had some accidents that have resulted in the loss of life and our sympathies are with those who have suffered these losses.

The commercial fishing industry is an extremely diverse industry ranging from large corporate owners and operators to the family-owned and operated vessel. It is an industry that is under enormous economic pressures from many sides. More limits are being placed on the amount of seafood a vessel may catch, thereby limiting their income. Regulations are being imposed as a result of efforts to protect the environment from pollution from all types of

vessels. Competition with imported foreign seafood severely limits profits. We must be aware of all of the economic pressures on this industry and this way of life, as we ask the industry to invest in greater safety.

These safety regulations must be reasonable and appropriate to the fishery involved. They must be easy to understand and to comply with. Everyone involved in the fishing industry has a strong interest in protecting the lives of their crew members. The purpose of this hearing today, is to hear the Coast Guard's explanation of their proposed regulations, inspection plan, and proposed legislation on licensing. We also want to hear from the industry and other interested parties on how these regulations will impact them and whether they will lead to increased safety for the crew of these vessels. This is a complex issue and is of extreme importance to this Subcommittee. Therefore, this hearing will not be the last on this issue.

I would like to make an announcement before recognizing our minority member for his opening statement. Every now and then we get a little piece of good news and it is good to announce it. I am sure the Coast Guard will be glad to hear this, too.

We have just received a news bulletin from the Secretary of Transportation that is of some interest to the Coast Guard and to this Subcommittee. It is basically an answer to our complaints and concerns about the idea of treating salad and other edible oils as hazardous materials which would be subject to OPA 90.

The Secretary is issuing a news release today indicating that he has concluded that he will not classify these oils as hazardous. So not only should the Coast Guard be delighted, but I am sure salad lovers across America will take great delight in it.

I would like to recognize my dear friend, the Honorable Howard Coble, our esteemed minority member for an opening statement.

**STATEMENT OF THE HON. HOWARD COBLE, A U.S.
REPRESENTATIVE FROM NORTH CAROLINA**

Mr. COBLE. Thank you, Mr. Chairman.

Admiral, who says only bad news emanates from this committee?

I thank you, Mr. Chairman, and, Chairman Manton, for having called this hearing on the important subject of vessel safety.

I believe that providing for the safety of Americans who work and play on our Nation's waterways is one of the most important duties of our committee. I would be particularly interested to hear the testimony of the U.S. Coast Guard and the fishing industry about the effectiveness and the necessity of the Coast Guard's proposals to license commercial fishing vessel operators and to inspect most commercial fishing vessels.

Most agree that fishing is a very dangerous occupation and that safety needs to be improved. However, I think that our subcommittees must closely study the Coast Guard's proposals to ensure that their legislation will truly increase and enhance safety without unnecessarily damaging an important American industry.

Again, Mr. Chairman, I thank you and Chairman Manton for having called this hearing.

[The statement of Mr. Manton follows:]

STATEMENT OF HON. THOMAS J. MANTON, A U.S. REPRESENTATIVE FROM NEW YORK,
AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES MANAGEMENT

Good afternoon. We meet today to examine a number of Coast Guard proposals aimed at increasing the safety of commercial fishing.

It is common knowledge that commercial fishing is one of our Nation's most hazardous occupations. Coast Guard statistics tell the grim story.

In 1992, commercial fishing activities led to over 250 sunk vessels and 100 lost lives.

I repeat 250 lost vessels costing 100 lives and countless injuries.

The Coast Guard has a number of plans to reduce this toll. The goal of this hearing is to examine whether these plans will have the desired result or if different, and perhaps additional, measures are necessary.

Some in the industry have complained about the high cost of implementing these plans. While cost alone should never be a factor in protecting lives, we must examine carefully the Coast Guard's proposals to ensure they achieve the desired safety goals. If we can reach our goals in a more cost effective and efficient manner than through the methods proposed by the Coast Guard, we will embrace that approach. Similarly, high priced measures that will not improve safety should be abandoned. However, our commitment to safety will not be diminished by claims that improved safety will impose an additional cost on the industry.

In closing, I want to commend my distinguished colleague, Billy Tauzin, for his role in this matter. He is dedicated to protecting our Nation's fishermen through ensuring that fishing vessels are soundly constructed and safely operated. We share a commitment to reducing the terrible loss of life associated with this industry. I look forward to working with the Coast Guard Subcommittee to tackle this serious problem.

Mr. TAUZIN. Thank you very much. Are there any other opening statements?

STATEMENT OF THE HON. WILLIAM J. HUGHES, A U.S.
REPRESENTATIVE FROM NEW JERSEY

Mr. HUGHES. Mr. Chairman, I have a statement I would like to put in the record.

Mr. TAUZIN. Without objection, any opening statements will be entered into the record.

Mr. HUGHES. I thank the Chairman for holding this particular hearing. It is timely. I represent an area of the country that has a fairly large commercial fishing fleet and recreational fishery. We have lost a total of 11 lives on 17 clamming vessels in little Cape May in the last ten years; 17 clamming vessels in the last 10 years! Last October was the last one.

There is no question that weather was one of the factors, but certainly there is a question of stability of many of these vessels. They stack clamming cages on board and, of course, the effort is to get as many on as you can because that increases the profits.

So I am anxious to see the Coast Guard implement new regulations. The people of my area are looking forward to new Coast Guard regulations that hopefully will save a lot of lives in the years ahead.

Thank you, Mr. Chairman.

[The statement of Mr. Hughes follows:]

STATEMENT OF HON. WILLIAM J. HUGHES, A U.S. REPRESENTATIVE FROM NEW JERSEY

Mr. Chairman, thank you for holding this hearing today on commercial fishing vessel safety. I commend you for bringing this issue before the Committee in such a timely fashion. As you know, this issue is of great concern to me.

Last year during an October storm, the fishing vessel *Mae Doris* failed to return to Cape May after a clamming trip. An extensive search found the vessel 70 miles offshore in 170 feet of water. The bodies were never recovered. While it is not possi-

ble to identify the exact cause of the sinking, there is reason to believe that a combination of bad weather and the condition of the vessel were contributing factors.

Indeed, as is common in this industry, shortened fishing seasons and tighter regulations often force vessels to operate in marginal conditions at best. Further, the promise of bigger profits leads to overloading, subjecting the vessel and crew to unstable conditions. These factors combined with others renders the fishing industry inherently unsafe.

I represent a district in which fishing, both commercial and recreational, comprise one of the primary activities and sources of income for my constituency. Indeed, the Port of Cape May, which is in the southern-most portion of my district, oscillates between being the second and third largest fishing port on the East Coast.

In 1992, Cape May was the tenth leading port in the United States in terms of the value of seafood products landed, with an exvessel price of \$34.9 million, and eleventh largest in terms of pounds landed with 93.9 million pounds. These values indicate that fishing activity is high as is the number of fishing vessels in this area.

Unfortunately, fishing vessel accidents and deaths resulting from these accidents are also high. From 1983 to 1992, 11 lives and 17 clamming vessels from Cape May alone have sunk, including two vessels in the past seven months!

Apparently, these numbers are not anomalous. Indeed, on average 100 lives and 250 vessels are lost every year in this industry. These numbers demonstrate that commercial fishing is extremely dangerous and is in drastic need of improving its safety. Accordingly, the Commercial Fishing Industry Vessel Safety Act was passed in 1988. I would like to know if the passage of this Act has had an appreciable impact on reducing these casualties?

Moreover, I have a particular interest in the Coast Guard's proposed rule on stability requirements, the proposed licensing plan, and the proposed inspection plan, and how the Coast Guard believes these plans will reduce the high casualty rate in the commercial fishing industry.

Finally, it appears to me that economic considerations and greed are important factors underlying the poor safety record. Indeed, small operators, such as those that live in my district, are already operating on the edge financially and feel that additional safety equipment is not affordable. These opinions have been clearly manifested recently when the Coast Guard mandated the carriage of EPIRBs and life rafts.

Clearly, safety is cost-efficient in the long run. However, I would like to know if the Coast Guard has considered the economic impact of the proposed licensing, inspection, and stability regulations on the individual fishermen? And how this impact is balanced against increased safety?

We must act to curb the high death rate associated with this industry and avoid accidents like the *Mae Doris*. The Fishing Vessel Safety Act appears to have moved us in that direction. I look forward to today's testimony in hopes of hearing how the proposed additional regulations will move us even closer to our goal of reducing the high casualty rate in the commercial fishing industry.

I will close my remarks by welcoming the panel. Thank you, Mr. Chairman.

Mr. TAUZIN. The gentleman from Alaska.

STATEMENT OF THE HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA, AND RANKING MINORITY MEMBER, SUBCOMMITTEE ON FISHERIES MANAGEMENT

Mr. YOUNG. I echo the words being said here, but contrary to my friend from New Jersey, I don't think we should expedite the proposals from the Coast Guard until they are thoroughly reviewed and we see the effect upon the industry itself. We all know that fishing is a very dangerous occupation, just like farming in which the two of them are side-by-side in fatalities. There are a lot of the things that kill fishermen, but I suspect that stupidity and carelessness are the two major causes. We have a lot of that in the industry itself.

Unfortunately, and thank God, we cannot legislate against stupidity. A lot of us would not be here if we could.

Mr. TAUZIN. Do you want to name names?

Mr. YOUNG. I am not naming names, but Mr. Chairman, I want to suggest one thing. If this is the charge we gave the Coast Guard, I think they have done their job, and it is our job now to see how it affects the industry we all represent.

It is interesting to hear my good friend from New Jersey mention the clamming industry, and the accidents that have been there. That is under the IFQs. It has been for years.

We were told the IFQs would grant us a higher safety record. I think maybe we ought to reanalyze where we are on IFQs. Apparently it doesn't work.

I am trying to bring up the fact that it is a problem we did not expect under the IFQs.

Thank you, Mr. Chairman.

Mr. HUGHES. I am not suggesting that we should not examine the regulations. That was not a part of my statement. My statement was that we have seen a lot of fatalities and a lot of boats sunk, boats we have not even looked at because they are not boats that we inspect.

Mr. YOUNG. Reclaiming my time, may I suggest one thing?

Again, most of these accidents, regardless of what we write, we have an affect on the economic basis of the industry itself. You cannot legislate against stupidity in this profession.

A lot of the fishermen get lazy, are tired or worn out or something occurs. I don't care what the Coast Guard does or what we pass, the fatality rate will continue to be there, maybe not as high, but it will always be high because this is a very dangerous occupation.

Mr. TAUZIN. Are there any other comments?

STATEMENT OF THE HON. DAN HAMBURG, A U.S. REPRESENTATIVE FROM HAMBURG

Mr. HAMBURG. Thank you, Mr. Chairman and colleagues. I too really appreciate your holding this hearing today because it is an area of great concern to my congressional district where there are a large number of fishermen, particularly those who fall within the smaller boat range.

The fishing vessel safety regulations we are talking about today are also very important to numerous fishing associations in the First District of California. Many of these have contacted me about this hearing today. I certainly support the need for a strong safety program.

I am very aware of the very courageous efforts of the Coast Guard and their search and rescue missions, and I recognize we need to take all possible precautions to minimize their risk. It is also important that whatever fishing safety program we enact be fair and reasonable to the fishermen who are being regulated.

Much of the fishing industry in my district is individual operators. Their boats are small and light. These fishermen feel that many of the proposed regulations such as the requirements for drills and buoyant apparatus do not make sense for them.

Of course, this is a time when the salmon trolling industry on the north coast is reeling from economic impacts from stringent restrictions. Many of the fishermen in my district feel the additional

burdens on them will only make it harder for them to survive. The issue here is economic survival and the survival of an independent way of life and it is a way of life that is highly valued on the north coast of California. The question is what do we regulate, how do we regulate and where is our responsibility to regulate? These are difficult questions to answer.

The average fishing income last year in my district was \$4,000 per fisherman, per fisher family. We must weigh carefully the fairness and cost effectiveness of requiring additional training and licensing which could carry a combined cost of somewhere between \$600 to \$2200 per boat. So, we have to understand the kind of impact we are making with these kind of regulations.

Mr. Chairman, I look forward to the testimony today on this issue so that I can increase my understanding and also so that I can better assist the fishing industry on the north coast of California.

Mr. TAUZIN. Thank you.

Mr. Bateman.

STATEMENT OF THE HON. HERBERT BATEMAN, A U.S. REPRESENTATIVE FROM VIRGINIA

Mr. BATEMAN. Thank you, Mr. Chairman.

I want to commend the Chairman also for scheduling the subcommittee's hearing on this important topic. I supported the 1988 Commercial Fishing Vessel Safety Act. In fact, I was the principal advocate of the Emergency Position Indicating Radio Beacon provisions of that act. I believe we must look closely at the reports required by that act which have now been presented to Congress.

While we should not unnecessarily burden the industry with more government regulations than necessary, we must make sure that we are providing fishermen with the same level of protection that we insure for other U.S. workers.

One of my constituents, Mr. Chairman and Members of the committee, Mrs. Rita Hutton, is here today. Mrs. Hutton lost a son in a fishing vessel accident last fall, in fact on the *May Doris* to which reference has been made, and there have been others of my constituents whose loved ones have been lost in the tragedies involving the fishing fleets.

Mrs. Hutton has asked me to state her strong support for, in her words, "untying the hands of the Coast Guard and letting them implement a mandatory inspection and crew licensing program". Mrs. Hutton is convinced that such a program would have saved her son's life. I look forward to the Coast Guard's testimony and that of the advisory committee and the industry.

Fishing, as has been pointed out, will always be an inherently dangerous occupation, but I hope we can work with the industry and the Coast Guard to minimize the risk as much as possible.

Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentlemen.

Are there any further opening statements?

[The statement of Mr. Fields follows:]

STATEMENT OF HON. JACK FIELDS, A U.S. REPRESENTATIVE FROM TEXAS, AND
RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE AND FISHERIES

I am pleased that the Subcommittee on Coast Guard and Navigation and Subcommittee on Fisheries Management is considering the important issues surrounding the implementation of the Commercial Fishing Industry Safety Act of 1988. Commercial fishing is one of the most dangerous occupations in the country, and we will want to do everything we can to make it safer. The Fishing Vessel Safety Act was an important step toward greater safety on the seas, and I am following closely the regulatory implementation of the Act to ensure that the Coast Guard proposals follow the intent of Congress.

As we consider new safety requirements for the commercial fishing industry, I want to make sure that we balance the need for safety with the need to maintain jobs in the industry. We have not yet fully implemented the requirements of the Fishing Vessel Safety Act, nor do we have statistics on the additional safety impact of these new requirements. In times of Federal budget constraints we cannot afford to enact new programs without carefully considering the effects of the program.

I am especially glad that we will receive testimony from Wilma Anderson of the Texas Shrimp Association. I look forward to hearing from her and the other witnesses today and working toward greater safety and prosperity for the fishing vessel industry.

Thank you.

Mr. TAUZIN. Ladies and gentlemen, we are pleased to have with us today Rear Admiral Gene Henn, Chief of the Office of Marine Safety, Security, and the Chief of the Environmental Protection of the United States Coast Guard.

Gene, what we are planning to do in this hearing and future hearings is to ask all other panel members to join you at the witness table and give all members a chance to hear the testimony before we get into questions.

Now, the panel will include Mr. Joe Easley, Mr. Al Dujenski, Mr. David Green, Ms. Wilma Anderson and Mr. William A. Adler.

As Members may have expressed themselves in their opening statements today, there is extraordinary interest in this subject matter on this Subcommittee. There are strong feelings that many would associate with the concerns expressed by the gentlemen from California, New Jersey, and Virginia, and other states that we have some balance here that provides us some measure of safety without unnecessarily impairing the opportunity of fishing families and corporations to earn a living.

We have tried to assemble the various views that we know about on this issue and we will lead off with Rear Admiral Gene Henn representing the United States Coast Guard.

Gene?

STATEMENT OF REAR ADMIRAL ARTHUR E. (GENE) HENN, CHIEF,
OFFICE OF MARINE SAFETY, SECURITY AND ENVIRONMENTAL
PROTECTION, U.S. COAST GUARD

Admiral HENN. Thank you, Mr. Chairman.

You know, it has been about two years since I first appeared before you in my present job. At that time I owed you a good many things.

I owed you a rulemaking. I owed you a couple of reports dealing with licensing and inspection. And I am very pleased today to report that I have delivered those work products to you and to this Subcommittee.

The Act that the Congress passed back in 1988 contained many provisions which we think were just right, provisions for more

major new equipment and design requirements that affected a fairly large population of vessels, 111,000 in number and fisherman totaling 250,000. The majority of subsequent safety regulations were published in a rulemaking in August of 1991. In that rulemaking, we have four tiers of safety equipment and design requirements generally tied to the levels of risk. I mentioned a moment ago that the majority of safety regulations were published in 1991.

However, at that time there were three issues that we separated from the rulemaking. These issues formed the basis of the supplemental notice of proposed rulemaking which was published in October 1992. What was controversial with the previous proposals remains controversial today. We are grappling with over 780 comments on the supplemental notice of proposed rulemaking.

There are seven issues addressed in this supplemental notice of proposed rulemaking, or SNPRM. The first three are holdovers from the Final Rules of 1991. The last four are new. The SNPRM addresses: stability for vessels less than 79 feet in length; survival craft requirements for vessels carrying less than four persons on board, but operating within 12 miles of the coastline; administration of exemptions; the Aleutian Trade Act; acceptance criteria for instructors and course curriculum; termination of unsafe operations; and stability for load line assignment. The stability proposals for vessels which undergo substantial alteration remain a stumbling block.

For the fishermen operating smaller vessels identifying a substantial alteration and then having the effects of that alteration analyzed continues to be a major concern. We now believe the proposed criteria associated with the definition of substantial alteration may be too stringent for vessels less than 79 feet in length.

I intend to find an answer to this problem and make sure we come up with a practical solution.

With regard to the ATA, the Aleutian Trade Act, it is not a secret that what we proposed in the supplemental notice of proposed rulemaking, that is, that ATA vessels be required to meet both equipment and design requirements, has proven to be very controversial. I believe the position we have taken is the correct one.

A major provision of the Act authorized the creation of the Commercial Fishing Vessel Industry Advisory Committee. This committee has and it continues to play a vital role in advising us on the action that we, the Coast Guard, should take.

Since its establishment, the committee has been very prolific in its advice to the Coast Guard. We have listened and we know that 75 percent of the motions presented, have been adopted by the Coast Guard.

In January of 1992, the Department of Transportation forwarded the fishing vessel operator licensing plan to Congress. In the plan, the Coast Guard proposed that all operators of federally-documented commercial fishing industry vessels of less than 200 gross tons be licensed.

The licensing plan calls for an innovative licensing system that would allow the Coast Guard to approve and authorize training organizations and third parties to examine and certify individuals

meeting the professional knowledge and skill levels required for a license.

There will be no Coast Guard examination. Applicants must attend a Coast Guard-approved course and receive a certificate of completion.

The goal of the licensing plan is to reduce the high rate of casualties occurring in the fishery industry. Additionally, in May of 1993 the Secretary of Transportation forwarded the Marine Safety Act of 1993 to Congress. This contained proposed legislation to license all the operators of federally documented commercial fishing vessels. Also, we submitted a Coast Guard inspection plan, a plan that proposes a three-tiered approach. We would look for Coast Guard inspection on vessels greater than or equal to, 79 feet, third party inspection for vessels greater than 50 feet, but less than 79 feet and then self-inspection for vessels less than 50 feet.

As we all know, human factors play a large part in casualties aboard ship. I think the licensing plan goes a long way to handling this problem and will indeed result in reducing the number of casualties. I think the inspection plan targets the need for the vessels to be looked at and maintained in a better condition than many are today.

Having said that, sir, I would like to conclude and I stand ready to answer questions when you wish me to.

Thank you.

[The statement of Admiral Henn can be found at end of hearing.]

STATEMENT OF JOE EASLEY, CHAIRMAN, COAST GUARD COMMERCIAL FISHING INDUSTRY VESSEL ADVISORY COMMITTEE

Mr. TAUZIN. Thank you.

I would liked to introduce Mr. Joe Easley. He is the Chairman of the Coast Guard Commercial Fishing Industry Vessel Advisory Committee.

Joe, if you will take a cue from the Admiral and notice he summarized his testimony, all of your written testimony will be made a part of the record.

Mr. EASLEY. Thank you, Mr. Chairman and Members of the committee. I would like to thank you for the opportunity to testify here today.

I will try to hold my remarks basically to what the committee has agreed to up to this point, to start with, at least.

I would like to say the committee has passed over 100 motions, I think it is over 120, as of our last meeting. The Coast Guard has implemented at least a substantial part of those motions and has acted favorably at least on some part of at least 75 percent of them.

We have had an ongoing session of learning to do business with one another, the Coast Guard wanting to do things their way, with the constraint of the Federal laws, and the committee being more interested in training than regulations.

Having said that, about the proposed rulemaking, I think that you have no doubt heard about survival craft. I think there is a lot of people who don't understand what is going on. I think it is cloudy there right now. It did change under the supplemental. But I think that will get cleared up.

On stability, I have real concerns and the committee did, about the letter of attestation and the reconstruction parts of that proposal that came out in the supplemental. You heard the admiral say they also had concerns about the reconstruction parts.

My reading of those regulations, if you did anything at all to a vessel, you would be falling under those reconstructions. You would go the whole nine yards.

This would preclude anybody from upgrading a vessel, which we would certainly like to see, even if they don't go the whole way. In my opinion, you would have people either not doing anything to the vessel or ignoring the law, one of the two. That would be a sad outcome.

On licensing, as you know, the Coast Guard submitted an original plan and now they have submitted another one that the committee agrees with. It was a compromise between the committee's position and the Coast Guard's positions. We think it is a workable one, one that allows for third-party training and certification and applications for the license through the mail.

We think this would be a lot easier than going through the traditional Coast Guard process and, in some instances, having to go great distances in order to take the test. It would reduce the need for additional government funds, we believe, on the part of the Coast Guard.

On the part of the inspection, the committee has looked at this twice, once when the Marine Board reported after their study. We came to the conclusion that we supported where the Marine Board was on inspection which was self-inspection.

We also considered this issue again in May, just last month, and we went through the Coast Guard's proposal, and after much debate, the committee came back with the same position of self-inspection. The committee felt, I think at least a majority of them, that the self-inspection was a good way to start, if you are going to have inspection.

We need to see what a lot of these other regs are doing and get some feedback of what is happening with them, in safety equipment and safety training, before we jump full bore into something else.

One comment on licensing and inspections. I think if anybody thought that they would solve the problem, we would not have any more fatalities because of it, we probably would be more than willing to pay the any cost to do that. But automobiles are a good example. We have a lot of licensing, and in some States, a lot of inspections.

We still have a lot of the fatalities. They probably take more lives in this country than anything else, as far as actual numbers.

I have one comment that deals with another issue. I would like to add, Mr. Chairman, it has to do with the Oil Pollution Control Act, which is requiring, in the regulations that just came out, and I missed it in the proposed rules, but it is there and I talked to the local Marine Safety Office and it would require fuel transfers plans for fishing vessels that carry a total of over 10,000 gallons of petroleum products. Supply vessels were exempted from this. We would like to see fishing vessels treated the same.

Thank you.

Mr. TAUZIN. Thank you.

[The statement of Mr. Easley may be found at end of hearing.]

**STATEMENT OF ALAN DUJENSKI, MARINE SAFETY SPECIALIST,
PETTIT-MORRY COMPANY**

Mr. TAUZIN. Our next witness will be Mr. Alan Dujenski, the Marine Safety Specialist at Pettit-Morry. Al is also a retired Coast Guard Commander.

I think we last saw each other in Seattle.

Welcome. We appreciate your testimony.

Mr. DUJENSKI. Thank you, Mr. Chairman.

I am going to try to summarize about 40 pages of testimony here and try to hit upon some of the highlights both of the comments submitted by myself and also Mr. Thomas Whitfield, an insurance broker.

I think by evidence, the fact that I am here today and representing the interested insurance companies shows one of the leading ways the insurance companies are trying to deal with the problems. They brought me on board to help their clients interpret the regulations and to come into compliance. We have held numerous safety seminars and also have done quite a bit in the pollution arena.

I had not intended to comment on this, but it came up about the drills, training and education. I would like to say from five and a half years in promoting fishing vessel safety, walking up and down the coasts, talking to individuals, that drills, training and education have to be the cornerstone to safety in this program.

I would like to just relate an example to you so you get an idea of what I mean. I bought a new car and the next day I drug my wife out there and I told her I wanted her to learn to change the tire. She looked at me kind of funny. I won't tell you exactly what she said to me, it is not germane to this talk. But I convinced her that the time to learn to change the tire is it not on a late rainy evening night on a back road.

The same thing applies to the fishermen, the time to learn about flooding, the time to learn about fire fighting, the time to learn how to put on your immersion suit is not when you are running around in the last moments of a disaster.

We have lost numerous people over the past decade that have had this equipment long before it was required and we still lose some of them unfortunately today, even though they have it. So I want to put an emphasis on that.

With regard to the drills, too many people think of the drills as a military-type function on the boat. It is not. It is a way of thinking.

I have sat down on the boats with these people over a cup of coffee and said what if you had this or how are you going to deal with that? And we would go down and look at a few things. We get done and I say, "That is your drill." They say, "Is that what you mean by it?" You talk about the mom and pop operation, now is a drill good for them?

If a husband falls over the side, how is that wife going to get that husband back on board? In 10 minutes in that cold water, he is cold and very unresponsive. It is going to be up to her to bring him

on board. These are real importance drills, and I want to emphasize that.

I will go through my comments in greater detail in the paper and briefly discuss them today..

The licensing study. First off, we went out and talked to the industry, we talked to the marine surveyors, the fishermen, owners, et cetera. So I am trying to take a lot of not Alan Dujenski's comments, but a lot of comments from the Pacific Northwest and present them to you.

Licensing, I think the study presented is generally good. Licensing does have the benefits of establishing some of the minimum levels of expertise for vessel operators. And hopefully this will help eliminate some of the personnel error out there.

The one thing that I want to urge is that it is stipulated that the Coast Guard cannot implement these regulations, however, without first laying out the guidelines and ensuring that resources are available and how they are going to carry out the program that is in place. The need to push this safety program from the initial regulations ended up putting the cart before the horse. We ended up putting out the regulations and then tried to figure out how we are going to implement them afterwards.

It is not Admiral Henn's staff's direct responsibility for that; it was driven by the situation. I think it is very important to minimize the confusion that exists out there on both the Coast Guard's and the industry's part.

We have to have that program laid out clearly in advance. On other thing is that although general safety navigation items are common, operational characteristics of trollers, trawlers, gillnetters and crabbers are all a bit different. It is my recommendation that a lot of these licenses might be looked at as being fishery-specific.

Inspection study, to put it bluntly, I disagree with the three-tier system. I think the data that has been pointed out and discussed in all the studies is in error.

The data base is not representative of all the casualties that have occurred out there. In reality the number of deaths, you are looking at are a higher number in the smaller vessels than in the large vessels.

Then with the self-inspection, who is going to train these people to self-inspect? We have Coast Guard people out there today that have not got a training program for them to be able to do these examinations. That, coupled with a lot of policies that are generated through the different mechanisms they have—then what we are looking at is very confused information, very little expertise trying to bring these boats into compliance.

For the 50 to 70 feet, it is not going to work on those either. There is so much ambiguity in those regulations that a lot of marine surveyors are reluctant to get involved in those now.

For vessels over 79 feet, I think there is a problem in that the Coast Guard has misunderstood the problem and also underestimated the expertise needed. The proposal that we have in lieu of that, I think in this economic climate would be welcome. As Mr. Easley had stated: Do nothing for the next five years in the way of the inspection program. But what we urge strongly is that you use this next five years to come out and license marine surveyors. You

will do more for the industry in adding some credibility to marine surveyors.

At the end of this five years, take a look at having third parties such as naval architects, or marine surveyors, or classification societies do the inspections. Not only will they be able to do it cheaper than the user fees that the Coast Guard proposes, but it will also generate probably as many as 3,000 jobs out there in the industry.

I have the red light. Do I have a chance for a few more comments?

Mr. TAUZIN. You certainly do, but I would ask you to kindly wrap it up.

Mr. DUJENSKI. The problem with the existing regulations are ambiguity problems. With the proposed regulations, they missed the mark. They are in greater detail in my written comments.

From the insurance industry, I think that in summarizing what the industry is saying is the people in the fishing industry have found it convenient to utilize the Jones Act as an unemployment insurance program through the PNI insurance, and that you have people coming in and making claims up to three years afterwards. You have courts that are vindictive against the fishing industry and you are looking at outrageous claims.

I think the Jones Act was not really intended for the indigent-type workers. We think that workmen's compensation would be a better approach for these. It will keep the costs down.

The marine underwriters have dwindled to about two and a half underwriters left and they may be gone in a few years because of PNI claims.

Thank you for allowing me to be here today.

Mr. TAUZIN. Thank you.

[The statement of Mr. Dujenski may be found at end of hearing.]

STATEMENT OF DAVID GREEN, NAVAL ARCHITECT AND MARINE ENGINEER

Mr. TAUZIN. We will now hear from Mr. David Green, a marine architect and engineer.

David.

Mr. GREEN. Mr. Chairman and committee Members, I appreciate the opportunity to speak here today.

I am a naval architect and marine engineering consultant in Seattle, Washington. At the time the first regulations were proposed, there was an ad hoc group of naval architects formed called Naval Architects for Fishing Vessel Safety, which I became chairman of. I was in the United States Coast Guard prior to my 14 years of shipyard management and naval architecture in the private sector.

I would like to concur with Admiral Henn on part of the regulations that is being discussed today. That is subpart A, B and C, which relate to establishing minimum standards for both vessel and survival equipment. They apply to all vessels across the board. I think they provide a very good baseline to start preventing some loss of life.

The original regulations established stability standards for the larger vessels over 79 feet. Most important were the training requirements for using the survival equipment in subject parts A, B

and C. It cannot be overemphasized how important training can be to the fishing industry.

For the supplementary notice that was published last fall, the part that the naval architects reacted to most was the stability for vessels under 79 feet. I think when we talk about stability, it is important for the committee to understand that for new vessels in general, there is no problem with the stability standards that have been proposed. This was also true of under 79 feet, for the group of vessels 50 to 79 feet. How these regulations address what we have today versus what is going to be constructed and put into service in the future is something you should bear in mind. Throughout all the discussions, no matter where the comments are coming from, it is new versus existing.

New, we don't have a problem. We can design vessels to meet the newer stability standards. When addressing any of the existing vessels it is very difficult to come up with standards that are understandable and will not place, particularly smaller vessels, in a position where either they go out of business or they completely rebuild the vessel in order to comply.

The proposals last fall we judged to be unmanageable, unenforceable and just impractical for existing vessels under 79 feet.

I am glad to hear that they are being reconsidered. There are things that can be done for these smaller vessels. One is training, education, of the operators. Many, many of the casualties are related to personnel error.

I know it was stated in one of the opening statements by the committee, also. That is not to condemn all the operators out there. There are many fine operators. But there are people who could improve their knowledge of the operation that they picked up through apprenticeships or growing up with their feet wet in operating boats. There is technical knowledge that will complement that experience, particularly related to vessel loading and stability.

Also, there could be considerably more emphasis put on the watertight integrity of the vessels. In casualty statistics, many vessels that were rated as capsized were really sinkers, they took on water, unscheduled flooding.

It is the same as if a ship was torpedoed. That is unscheduled flooding. And almost all torpedoed ships sank by rolling over, but that is not a capsize due to improper stability. It is flooding and sinking.

The Aleutian Trade Act is controversial. Industry has made their comments. I hope that the Coast Guard will reconsider so that these existing vessels are not subjected to requirements terms far in excess of inspected vessels.

With respect to the inspection program, the major challenge in the entire regulation and inspection program is identifying what will stop vessels from sinking because the primary cause of death is drowning, which is associated with a vessel sinking. Sometimes it is material, most often it is operation problems.

What can you do regulation wise to correct these human error or problems? I don't know.

Training is something that can be done.

There is one thing which I would like to talk about very briefly. That is communications with the fishing industry.

Today the communications are poor with the fishermen at large. The **Federal Register** and other documents that are normally issued by the government, such as Code of Federal Regulations, are not effective. Number one, very few people in the industry subscribe to these documents.

Number two, the language is not readable for the man on the street. This is a very, very serious problem. It is the underlying problem in all attempts to inform the public and generate comment to proposed regulations.

The industry is not informed, they are not getting the word and then they cannot read it once they get it. I would stop there.

Mr. TAUZIN. That is a good point to stop at.

Thank you very much.

[The statement of Mr. Green may be found at end of hearing.]

STATEMENT OF WILMA ANDERSON, EXECUTIVE DIRECTOR, TEXAS SHRIMP ASSOCIATION

Mr. TAUZIN. Our next witness will be Ms. Wilma Anderson, Executive Director of the Texas Shrimp Association.

Wilma.

Ms. ANDERSON. Thank you, Mr. Chairman and Members of the committee. I appreciate being here today.

I am probably more closely related to the industry than anybody else. I was actually a little amazed to hear that we are quite as negligent as vessel owners. Some of the remarks, I think, need to be clarified.

Texas Shrimp operates Gulf trawlers in the Gulf of Mexico. We represent about 673 them. They are in the 79-foot range on the regulation, that we are very upset that we are looking at that.

We are under 100-gross tons, but we do operate outside the outside the boundary lines which throws us into the other sector of the regulations.

We feel that the Gulf of Mexico with its warm climate, warm water temperature, the nature and construction of those vessels, and also, those vessels are stable, has been grouped in and lumped in and we have feel they should be separated. That is why we are upset with the standardized form of regulation. We do not agree to this third-party idea.

When you get people in between us and the Coast Guard, you get another set of regulations. You are going to hamstring us until we can't survive. We would rather deal straight with the Coast Guard than with a third party, surveyors, instructors and trainers.

I keep hearing about all the training. I want to know what training they are talking about. Are they saying our captains don't know how to get the vessels off of the dock or are they saying our captains don't know how to put their rigs overboard?

I keep hearing training. But I have never heard an explanation yet what the training is it all about. You are going to have casualties, there is no if, and or buts about it. They are going to have casualties, like they said, on the highways.

But I think if you look at the record, I take exception with the insurance company's statistics. The insurance companies have paid off on claims. They listed those claims, but simply they did not

want to fight the case in court because there was a high award. Once you pay off on a fraudulent claim, it goes on record.

I think if you have full statistics, which I understand the Coast Guard is now setting up a computer base for, you are going to understand that the casualties and injuries are not what is out there. The insurance companies paid off to stay out of the courtrooms.

We like the theory that a crew member has to give us a report within seven days. By then, when that boat is in, we have the captain, or the rig man or the third man. We know what happened out there and we can hit off an injury claim.

It is good, fast dollars and the trial lawyers have had a field day with this shrimp industry and probably a lot of the other industries.

We do not like the theory of bringing surveyors into it. The surveyors will nitpick us to death.

We will be broke bringing them back and forth on three or four trips. Keep your third party out of the it. Let us deal straight with the Coast Guard and let this industry survive.

We have problems but I think we are far advanced in safety. I think the Coast Guard can attest to that in the Gulf of Mexico. But I don't think you can standardize regulations for the entire fishing fleet when it is all in different locales.

Yes, Mr. Hughes, I took exception to your statement. The ITQs, the fishery arrangement plans, do have a bearing on the way these boats are having to be run under the economic situation.

I cannot blame the owners for pushing. That is why I fight constantly to keep ITQs out of the Gulf of Mexico. When you have a set time span when that gate opens and that gate closes, those crews and those boats are going to be pushed to the hilt beyond their limit and they are not going to be able to stay with it. And it does cause casualties.

I think the industry is in good shape. I think it has been overlabeled on casualties. The Coast Guard is a little ambitious on regulations, but let us come in and work with them.

We would prefer to keep the third parties out of the regulation. That is where the third party will exist.

Mr. TAUZIN. Thank you.

[The statement of Ms. Anderson may be found at end of hearing.]

**STATEMENT OF WILLIAM A. ADLER, EXECUTIVE DIRECTOR,
MASSACHUSETTS LOBSTERMEN'S ASSOCIATION, INCORPORATED**

Mr. TAUZIN. Mr. William Adler.

Mr. ADLER. Thank you, Mr. Chairman. I would like to thank you for the opportunity to comment on proposed U.S. Coast Guard safety regulations.

My comments today represent the feelings of not only the 1,100 members of my association, but also the 1,200 members of the Maine Lobstermen's Association as well as several other smaller lobstermen's associations?

Our area, in all, almost 3,000 commercial lobster fishing vessels are commenting here. I would like to run briefly through the type of operation that we are referring to.

Our vessels are less than 50 feet. We operate within about seven miles of the shore. We leave in the morning and we are back before dark.

While this is only an average, our operation grosses probably are in the 40 to 50-thousand-dollar range per year, and our operating ratio costs are about 50 percent. We do, however, fall into the category being considered in these proposals. In general, the explanations for the proposed rules on stability inspections and licensing are very hard to understand.

As leaders of the fishing groups try to explain what all this means to each of these fishermen, small individual businessmen that they are, and their boat, we find confusion, misunderstanding, in some cases disbelief that the big world of Washington, the Coast Guard and big ships means them. We feel that all three of these proposals as well as some of the previously implemented safety requirements are unnecessary for our size operation and range. Even the reports submitted to Congress on the inspection issue indicates that the annual fatality rate on vessels in our class is relatively low, especially considering the total number of vessels involved.

We do not believe that implementation of any of these proposals being considered today will result in noticeable saving of lives, and, in fact, may be the case of overkill in the name of vessel safety. I did leave out one little section of our size, and that is we operate with from one man on board to as many as three, and that is it.

In general, on stability, we strongly oppose any stability requirements such as has been proposed for vessels under 50 feet, whether they are current or future vessels. If it is the intent of the drafters of this section to exclude or grandfather these vessels in some form, it has not been defined clearly enough. The proposal raised many questions with regard to our existing vessels and new construction. We have raised some of these questions in our written testimony. One might wonder if it is wise to force changes in currently seaworthy designs, which this could do. This in turn raises the prices of a boat, discourages possible purchase of a newer, safer model, not to mention the possibility of damaging the boat business itself.

We believe that the proposed requirements and stability for vessels under 50 feet should be eliminated completely from the proposal, and we urge that you take this action. Regarding inspections, we believe that the proposal to have self-examination for vessels under 50 feet is reasonable, but unnecessary. With this proposal there will be an enormous amount of paperwork, cost and waste of valuable manpower to administer this. We are talking about auditing 25 percent of over 100,000 vessels in this category each year.

If this proposal replaced random seaboardings inspection, which cause disruption of valuable fishing time, this proposal would have merit. We don't think this will be the case. We do, however, feel that self-examination check lists for our size vessel is preferable to other options proposed.

The last one is on licensing. We oppose this proposal for our many inshore day boat operators because we do not believe it will improve safety in any noticeable degree. No test, screening or certification can take the place of knowledge learned by the fishermen as they live and work on the sea. Experience will remain the best

teacher. Many of our fishermen, although very capable at sea do not do well in the classroom. Requiring courses and tests for which fishermen must pay will benefit only the firm who has been set up for the school. We would recommend that this proposal be shelved at this time.

To conclude, we would like to say sincerely that the men and women of the U.S. Coast Guard have been doing an outstanding job for this country and its fishermen in saving lives, and we greatly appreciate their tireless efforts. With regard to the Commercial Fishing Vessel Safety Act and its admirable intentions, we feel that the measures that have already been taken are sufficient for now and should be given a chance to work.

Let's not overdo it to the point where we sink our fishermen with regulations and requirements while trying to save them. Once again, Mr. Chairman and members of the committee, I want to thank you very, very much for letting me comment for my people on this. Thank you.

[The statement of Mr. Adler may be found at end of hearing.]

Mr. TAUZIN. Thank you, Mr. Adler.

Admiral, the Chair will recognize himself for such time as he may consume. I hear several common concerns being expressed here. The first is clarity of the regulations, readability, understandability. I am looking at section 28.600, "Stability for load line assignment. Prior to the issuance of a load line certificate in accordance with the provisions of 46 CFR Subchapter E, whether such certificate is required or not, a vessel must comply with, (1), the requirements of this section and, (2), the requirements of 46 CFR Subchapter E. (b) Each vessel must be inclined in accordance with Section 28.535, and comply with the requirements of (1) 170.170 and 170.173 of part 170 and subparts B and E of part 173, if involved in lifting and towing respectively; or (2) sections 28.545, 28.570, 28.575, and subpart E of part 173, if involved in towing. (c) Except as provided in paragraph (d) of this section, when applying section 28.570 each vessel must have positive righting arms to an angle of heel of at least 60 degrees. (d) A vessel need not comply with paragraph (c) of this section provided that: Each hatch in the watertight-weather-tight envelope," et cetera. Admiral, do you get my drift.

It would take a Philadelphia lawyer to get through that. Is the complaint about readability, understandability and clarity a valid one?

Admiral HENN. Yes, sir. I take your point, and I would point out that some of our best lawyers wrote that language that you just read.

Mr. TAUZIN. There is a scene in Jurassic Park that might interest those lawyers.

Admiral HENN. Sir, one of the things that we do to help out in understanding the regulations as they are required to be written for the *Federal Register* is to put out Navigation and Vessel Inspection Circulars that are more in the layman's tongue, and certainly those are the things that we would do in implementing any of these programs. We use NVICs constantly. We have a couple hundred of them on the books now. There are ways to get around that problem. Your point is well taken. I have no answer for that, sir.

Mr. TAUZIN. Well, obviously, one of the answers is that if we are going to write complex regulations like this, they should be as understandable and readable as possible. In addition, the Coast Guard is assuming an enormous obligation toward communication and education amongst the fishermen. Are you prepared to do that?

Admiral HENN. Yes, sir, we are. In fact, some of the things that we have done already, just to address that problem, is that we put fishing vessel coordinators in each of the districts, and they have been in place now for a little over two years. Their specific task was to go out and visit the community, visit the various fishermen and their associations, talk with them, understand their problems, and in any way they can help those folks out.

In addition to that, we have put 45 folks out in the field as examiners to do the dock side examinations, the voluntary program that we have in place, so that is important. We must do that and we must do more of it.

Mr. TAUZIN. You understand that there is a lot of skepticism about whether enough will be done. Also, there is a lot of concern that with a new set of very complex regulations that there will be an awful lot of confusion and complaints registered by constituent fishermen in all our districts. We also hear conflict in the regs and the proposals.

One conflict is the regulations are complex, vague and subject to interpretation from one Coast Guard district to another, and the converse, that the regulations aren't specific enough to each fishery or each location to ensure that differences in the implementation occur in each one of the fishing areas and with the different fisheries of our country. For example, we hear, you know, that obviously there is a clear difference between the safety requirements of falling into the warm waters of the Gulf and falling into the cold Alaskan or Washington State waters. The regulations must take that into account and be flexible. There must be specific fishery condition provisions, otherwise the regulations are not going to make much sense to people.

How do you deal with these concerns so they are specific enough for the fisheries, so they are specific enough for locations that each region is not interpreting the regulations differently; such as vagueness, ambiguities, and subjective enforcement. How are we going to handle that?

Admiral HENN. Well, sir, my job within the Coast Guard is to set the policy and get the dollars and the people out there to put the regulations and the policies in place. We will not interpret the regulations differently in various parts of the country, and that is my job to see that we don't. With regard to different requirements for different types of vessels, there is some of that already in the regulations. Stability is one of the considerations that takes different types of vessels into mind, more on length than on type of fishery activity. Also, with regard to equipment carried on board, we take into account whether the vessel is going to be operated in cold waters or waters that are deemed something other than cold year round, and the requirements are lesser for vessels that are operating in the warmer waters.

Mr. TAUZIN. [Speaking French].

Admiral HENN. I don't understand you, sir.

Mr. TAUZIN. You got my point. There are people who don't speak and read English well, but are great mariners and great fishermen. They may speak Dutch, Portuguese, Croatian, or they may speak French. We are about to impose a lot of laws and regulations on them. How are you going to deal with these folks? These great fishermen or mariners are an incredibly hard-working bunch of folks who are just going to raise hell when they are told they have got to be licensed and regulated by inspectors who can't even speak their language.

Admiral HENN. Well, sir, we have done this with the towing vessel community. I was part of that about 20 years ago when we brought licensing in for towing vessel operators. We had very similar problems, not to the extent that we have today. We weren't faced with a large Vietnamese community, but we certainly had the Louisiana towing community as well as some of the other areas where the language was French or maybe even geographical specific, but we can handle that. In fact, we already are. The information that we put out, general information, the booklets we publish, those are in four languages now, including Vietnamese.

Mr. TAUZIN. What about a man who can't read. You can put it out in every language in the world. If the fishermen can't read or write, you are not going to reach them. How are you going to handle that?

Admiral HENN. Well, with regard to licensing, if we just take that for a moment, sir, in the classroom atmosphere that we envision, the performance objectives will be accomplished by hands-on training.

Mr. TAUZIN. In English?

Admiral HENN. In English or schools are going to go where the work is, and certainly the schools can put out their training in whatever language—

Mr. TAUZIN. I raise that only to illustrate for you the extraordinary complexities of the fishing communities of our country, and how difficult this process is going to be once you embark upon it. One of the clear admonitions we heard today was don't implement until you are fully capable of implementing. My deep concern, and I think other members are going to share it, is how prepared you are to implement some of these complex new rules among a group of fishermen in America who have no idea of what is required of them because they do not understand or can not read the regs, much less understand why some of this is being imposed upon them. Admiral, I hope that you all give it a lot of thought as we conclude this effort.

I wanted to turn quickly to Miss Anderson. Wilma, you recommend we put all the regulations on hold until all of this is settled. Are there not some regulations that could go forward that would provide a good degree of safety and are reasonable to administer at this time?

Ms. ANDERSON. Mr. Chairman, we have been within that safety factor. Like I mentioned in there, we are familiar with all the navigation, all of the distress. This is what kind I was referring to, what is all the instructions and training about? Nobody kept telling me what they were going to train them on and what they were going to instruct them on because we already have our crews in-

structed and trained. We are already into some of these categories well in advance of these regulations. What concerns us is this vessel stability and some of the other fine print we are getting into.

When I read the regulation, it does not stipulate if it is a length overall or a registered length that we are talking about, and that is a whole different factor where a vessel is going to fall, and it never did stipulate because if you are talking 79-foot length overall, that vessel is out of that borderline category, but a 55-foot vessel is going to be underneath the category of 50 foot. That is what is disturbing to us. We don't know when you read stability the way it is written. Do we modify or is our vessel already grandfathered in? What is the actual length we are talking about.

Let me tell you when you get into a bunch of alterations, that is my objection. You are going to be talking 30, 40, 50,000 a boat.

Mr. TAUZIN. Let me see if I can clarify something real quick. Admiral, do plan to explain to the fishermen what the proposed rules mean and where they will apply in clear and understandable terms before they are final or is that to follow the Final Rule?

Admiral HENN. That would follow, sir. I would just like to make a point here. The concern that you expressed about "having things in place before we start implementing the licensing", indeed we have taken that point, and the scheme is to have a seven-year phase-in period for implementing the licensing plan. This would begin with a two-year hiatus while we get the training industry up to speed. During this time anyone wanting to apply for a license would submit an application to the Coast Guard and receive an acknowledgement allowing for a three to seven year grace period to get a license, so I think we have got that fairly well cranked in.

With regard to the point on the length, length is length overall as indicated on the document, and, yes, licensing or inspection has cost with it, and there is no way to write those costs out, sir.

Mr. TAUZIN. The Chair will recognize the Ranking Minority Member, Mr. Coble, for questions at this time.

Mr. COBLE. Thank you, Mr. Chairman. Admiral Henn, have you seen any improvement in fishing vessel safety since the Coast Guard began implementing the Commercial Fishing Industry Vessel Safety Act of 1988, I think it was?

Admiral HENN. Sir, with regard to total numbers, and I am referring to total numbers with regard to vessels lost and fishermen whose lives were lost, we are not seeing a dramatic turnaround in the numbers. However, that might well be expected as we are just at the beginning of the program.

One of the things we are seeing, though, and I would just like to draw your attention to some of the cases that we get in, with the use of EPIRBs, with the use of the survival suits. A vessel goes down, the EPIRB signal is sent. We get our search and rescue resources there within an hour or so, and we find the people, they are in their wet suits, the immersion suits, and we save people. We figured looking through the SAR statistics, the search and rescue statistics, for last year that at least 17 lives were saved as a result of EPIRBs and immersion suits.

Mr. COBLE. All right. Let me ask you another question. In the report to Congress for the inspection of commercial fishing industry vessels, the Coast Guard stated that the commercial fishing in-

dustry failed to embrace a voluntary inspection program. Admiral, I want to ask you a two-part question.

Number one, explain to us, if you will, what prompted the Coast Guard to conclude that the voluntary inspection program was indeed a failure or not a success, and, number two, I would be glad to hear from your colleagues at the table as well as from you, and I am going to ask you to put on your objective hat when you respond to this. Do you feel that the Coast Guard adequately promoted the voluntary inspection program to the fishermen involved?

Admiral HENN. Sir, I was the Division Chief under then Rear Admiral Lusk who put the voluntary program together, so I feel very strongly about that voluntary program. That was during an era when fishing vessels were going down at such a rate that the insurance industry said we are not writing anymore fishing vessel insurance, and I am talking now 1982, 1983. We put that voluntary program together.

Again, we put it out in a system of Navigation and Inspection Circulars. Industry at first gave us a lot of resistance, but slowly industry began adopting the program, began working with us. One of the killers of that whole program was the insurance companies said they couldn't recognize good operators. They wouldn't give them a rebate on their insurance or reduced insurance rates like the car insurance people do, and we worked that issue very hard and we were not successful on that, but Congress decided that the voluntary program wasn't working after a series of fairly sensational fishing vessel losses occurred in one winter. The Congress said enough is enough. Your voluntary program isn't working, and you went ahead and enacted the Fishing Vessel Safety Act of 1988. I think it was the right thing to do, I think it is a great act.

With regard to the second question, did the Coast Guard promote that voluntary program? Yes, sir. We pulled out all stops out on that, and I think that given time it might have been a success, and I think it would have been a success for sure if we could have gotten the insurance companies on board. Having said all of that, I again, think Congress did the right thing, though, and went ahead and passed the Fishing Vessel Safety Act.

Mr. COBLE. Do any others want to respond to that second question? Yes, Wilma?

Ms. ANDERSON. Mr. Coble, I will agree with Coast Guard. They did everything to bring the voluntary program into compliance. I would like to remind the committee and the Coast Guard in 1982 was the biggest downturn in economics there was, and it may explain some of the sinkings that occurred. It was not their plan failing, it was economics and the economy.

Mr. COBLE. Yes, sir?

Mr. ADLER. Bill Adler here. I would just like to say that the Coast Guard up in our area did and has been and is promoting this voluntary inspection system, and a lot of, I know, our boats are trying to do it. Once again we are talking about thousands of boats here. We are talking about a couple of people that can do these exams, but I fail to see that it is a failure. It is going on now and it may not be moving as fast as everybody would like it, but I don't want to count that out right now.

Mr. COBLE. Thank you. My time is about to expire, Mr. Chairman. I want to ask Mr. Dujenski a question. Sir, you referred to 3,000 jobs, and I didn't grasp that. Elaborate in more detail if you will.

Mr. DUJENSKI. What we are saying in creating those jobs is that in lieu of bringing on more marine inspectors, looking at the full range of vessels that would need to be surveyed either on an annual or a biannual basis, it would create jobs for people in the industry. Good qualified marine surveyors, you have a lot of good ones out there today, but there are also quite a few that are giving that aspect of the industry a poor reputation. You have a lot of Naval architects, you have a lot of ship board engineers that are out of jobs today that could do excellent jobs in the area of marine inspection.

The proposed fees that you are looking at for Coast Guard user fees right now are about twice that of what the marine surveyors are charging. Why not create the requirement for these vessels to be third party examined and just let the Coast Guard run an oversight instead of increasing the number of Coast Guard people that we have to pay for through taxes. And the other one is, to administer a user fee program also takes a lot of time and money.

Essentially using a third party which would be both marine surveyors and/or classification societies for the larger vessels is in fact a user fee program.

Mr. COBLE. My time has expired, Mr. Chairman. I would like to, in conclusion, Mr. Dujenski, let me review your statement again. I think perhaps additional information on this might be desirable if you can provide that. Thank you, sir. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Coble. The gentleman from New Jersey, Mr. Hughes.

Mr. HUGHES. I thank the gentleman for yielding, and I would like to welcome the panel.

Admiral HENN, let me ask you, can you write uniform regulations that really do not overreach in some sectors of the industry? For instance, some of the practices and procedures in the clamming industry are vastly different than those in the lobstering industry, and my question is do we have to look at the industry sector by sector to see what is fair and reasonable?

Admiral HENN. Congressman, I think we have taken a general approach that is based on length and to some extent the climate that a vessel operates in. I think staying as general as we are in our requirements, is a good approach and can be done for the fishing vessel industry. I think if we wanted to get more specific, that, too, is possible, but I am not sure we want to start lumping on additional requirements. It is doable.

Mr. HUGHES. The reason I ask is rather obvious. I recited the kind of fatalities that we have had in the clamming industry, and their practice is to stack these cages on these vessels, and it creates conditions, as I understand it, of instability. This is a lot different, for instance, than that which would be experienced in other fisheries, and so one of the complaints, and I think it is a legitimate complaint that I hear, is that to saddle the rest of the industry with regulations to get at some of the practices in one particular sector of the overall fishing industry is not fair. It saddles them with ad-

ditional expenses that are unnecessary. Is that a legitimate criticism?

Admiral HENN. Yes, sir, that is a legitimate criticism. However, in talking about stability, in fact, stability information should be vessel specific. It should be operation specific, and a Naval architect can do that. That is not a very difficult job at all, so we put out general stability requirements. A Naval architect can customize those to each vessel, to each operation. That is doable. It is fairly easy, sir.

Mr. HUGHES. How high has the incidence of sinking and fatalities been in, let's say, the lobsterman's industry or the shrimp industry?

Admiral HENN. I don't have them broken out by vessel operation, sir.

Mr. HUGHES. Mrs. Anderson, do you know offhand?

Ms. ANDERSON. In the Gulf I think I would recall probably in the last five years we may have had three sinkings. Now, whether it has been due to stability-the gulf industry has gone mainly to steel hulls, and what we have lost is a lot of wood hulls in the last five years simply because the wood has deteriorated and sinking has created them to be lost. It is not in the stability factor. It is simply-you have to look at the age of the trawlers today.

The bulk of them are at the 15-year mark, and when you got wood hulls, they are going to have 15, 20 years, and after that they are going to lose their life.

Mr. HUGHES. But you think it is three in the last five years roughly?

Ms. ANDERSON. It has really mainly been in the wood hulls we have lost and it is simply deterioration.

Mr. HUGHES. How about the lobsterman's industry?

Mr. ADLER. To our knowledge there has not been a great amount of loss of life particularly in the way of boats tipping over or sinking. Any losses that we have had or a lot of the losses that we have had were unrelated to the stability of the sinking of the boat at all, and there weren't a lot. There were a handful, and we don't believe that it was a serious problem.

Mr. HUGHES. Admiral Henn, I realize you don't inspect many of the vessels in my area, particularly those under 79 feet. Has the Coast Guard done an assessment of perhaps what has occurred to have such a high incidence of fatalities and sinkings in this one industry in such a short period of time?

Admiral HENN. When there is a loss of a fishing vessel, sir, we do an investigation. I can frame the picture maybe a little bit by looking at the 1989 commercial vessel data, looking at losses. There were 252 losses that year. Of those 128 foundered, 44 were lost due to fire and explosions, 19 due to collisions, 33 to groundings, 12 due to hull or machinery damage, and 16 fell in a miscellaneous category, a little bit of all of those. So sinking is the biggest problem, as was pointed out earlier by Mr. Green.

We take a look at what happened. These are the results, the foundering, the fire and explosions, the collisions, but indeed in about 80 percent of those the human factor, the person was a part of the scenario of events that resulted in a foundering or collision or whatever.

Mr. HUGHES. When you say human factor, are you including, for instance, the decision to go out in inclement weather because you have a quota and you have to basically make that quota within a time window that has been given to you? Was that a factor?

Admiral HENN. Yes, sir.

Mr. HUGHES. How much of a factor was the unseaworthiness of the vessels?

Admiral HENN. Well, from the statistics that I just gave you, if I could take a general cut, it would be about half of the cases seaworthiness was the major factor.

Mr. HUGHES. So between the economic incentives, that is the effort to basically take advantage of that window or to load up in a fashion that makes the vessel unseaworthy, along with lack of training, part of it.

Admiral HENN. Yes, sir.

Mr. HUGHES. That accounts for a high percentage of the fatalities that we have had?

Admiral HENN. That is correct, sir. Usually it is not one thing that loses a vessel or kills the fisherman. It is usually a series of causes.

Mr. HUGHES. Well, I know my time is up, but the point is that in many instances we could have avoided many of the sinkings and fatalities if we had done some inspections and provided some training?

Admiral HENN. Absolutely, sir. You know, when I was in Philadelphia at the Marine Inspection Office, I recall inspecting a 65-foot vessel. It was a fishing vessel, a documented fishing vessel, steel. It also had a small passenger vessel certificate on it, and that was the reason why I was inspecting the vessel.

One of the crewmen, as I was crawling the double bottoms, went with me, pointing out for me areas where the hull was thin. After I had punched about two dozen holes in the bottom of the vessel and taken the certificate off, the owner decided he was going to give up his small passenger vessel certificate. He did the minimum repairs to the vessel and used it just as a fishing vessel. I recall that to this day, and I recall how anxious that young fisherman was that he was going to be sailing, going fishing on this vessel a couple days later after they did the postage stamp repairs to the hull. I think inspection is needed, sir, regardless of the arguments saying that, no, we really don't need it. I think you need to level the playing field.

There are good operators out there, and thank God I think most of them are, but we need to level the playing field and we need to do that by ensuring there is a standard for all that they must adhere to.

Mr. HUGHES. I think that some of the criticism is legitimate. I don't think that we need overkill. I think we need to make the regulations simple. We need to ensure that there is some connection between the regulations and the safety we achieve. We intend to achieve good regulations, but unfortunately most of the laws in this country are written for a minority that unfortunately do not exercise good common sense. Thanks. Thank you, Mr. Chairman.

Mr. LAUGHLIN. [Presiding.] Next the Chair will recognize the gentleman from California, Mr. Hamburg.

Mr. HAMBURG. Thank you, Mr. Chairman. I certainly agree with the remarks made by Mr. Hughes. I think that too often we regulate for those who are not being careful, who are not exercising responsibility, and sometimes it really puts a very onerous burden on those who are. You know, I have one of the fisheries in the country that maybe is in the worst shape to take any more regulation on. It is going to be costly. When I look at the proposed regulations here and see them in the range of \$500 to a thousand dollars and more, you know, my people, you know, simply can't take it, and I wanted to ask Mr. Easley with respect to this Vessel Advisory Committee, also Mr. Adler if you can add something to this, too, considering how much of the U.S. fishing fleet is made up of small vessels, are those vessel operators really adequately represented on the, what is it called, the committee, the Vessel Safety Committee?

Mr. EASLEY. Commercial Fishing Industry Vessels Advisory Committee.

Mr. HAMBURG. Yes, that one.

Mr. EASLEY. Mr. Chairman, Representative Hamburg, David Allen from Crescent City, one of your constituents, who is a small vessel owner, is on the committee. He is quite an eloquent spokesman for their point of view, I might add.

Mr. HAMBURG. Maybe we need two.

Mr. EASLEY. Well, I don't know what you are going to do when you have only got seven fishing industry people on or what is it 10 out of 17 on a committee and you can't have everybody in the world on the committee and still have a committee, so it is a problem, but in the case of the lobster men, I know that when it was originally formed Ed Blackmore, who was director of the Maine Lobsterman's Association was on there for, I believe, two years, and retired and did not come back on the committee, but there has been several small boat people on the committee over time, and there still is some on the committee.

Mr. HAMBURG. Mr. Adler.

Mr. ADLER. I really don't know whether one is enough or whether there should be two. I do think that these type of vessels which number a hundred thousand in the country, according to the Coast Guard, do need to have representation, and I am not saying that the current member is not enough or whatever, but I think that you have got such a large constituency there which are going to be affected by these things that maybe you ought to take a look at it, but that is all I want to say on that. Thank you.

Mr. HAMBURG. Yes, sir?

Mr. EASLEY. There is also, I believe David operates a documented vessel. That would be a small vessel, but still a documented vessel. We also have a fellow out of Florida that represents vessels that are not documented, and which are probably a lot larger group than the small documented vessels even. There is a lot of State-numbered vessels that are involved in particularly near shore fisheries around the country, which would be your biggest number of vessels. They are the least impacted by the regulations also, I might add.

Mr. HAMBURG. I would also like to raise a question about something that was required in the last set of regulations, and you have mentioned that these EPIRBS-as I go around and talk to fishermen

in my district, EPIRB has become kind of, not a dirty word, I guess, but a dirty acronym, and I have heard that there is a large percentage of the time that these devices go off, they are false alarms, like the one going off right now on my belt. That was right on cue. Is that true? Seven percent is the figure I have seen.

Admiral HENN. That is true.

Mr. HAMBURG. Are true alarms and the rest are false alarms?

Admiral HENN. That is true. Part of it is due to a need for training. The way some of them are designed people get confused whether they are putting them in the stand by mode or the test mode, and we are working that problem. I think that is a solvable problem as the new models come on line, but, yes, are there many false alarms, but we can sort out the false alarms quickly.

Mr. HAMBURG. So the fact that 93 percent of the time they are false alarms, this isn't having any effect on Coast Guard response time, is it? I mean, this isn't a——

Admiral HENN. No.

Mr. HAMBURG. Crying wolf situation.

Admiral HENN. No, sir, we respond to every one. Usually by the telephone you can check quickly to see if in fact the EPIRB has either malfunctioned or somebody is trying to test it and has actually alarmed it. We check every one of those out. As I say, if the vessel is in port where they are usually testing them, it is a matter of a phone call and we check those quickly. If it is a true emergency, that sorts out within a matter of minutes also.

Mr. HAMBURG. OK. Thank you very much, Mr. Chairman.

Mr. TAUZIN. [Presiding] Mr. Taylor from Mississippi.

Mr. TAYLOR. Thank you, Mr. Chairman. Admiral, how many of your boatswain's mates can find the vertical center of gravity on a 41-foot patrol boat, standard boat, every one of them looks just alike. Two percent, 3 percent?

Admiral HENN. I would say somewhere in that range probably, sir.

Mr. TAYLOR. How about to tell you what the maximum heeling moment is on a 32-foot port security boat. How many of your boatswain's mates can tell you what that is?

Admiral HENN. I couldn't say, sir. Probably most of them can't.

Mr. TAYLOR. Yet every one of them has been to boot camp. Most of them have been to an A school, and all of them have had continuous refresher training. These are guys who do nothing but one thing on one boat, and you are expecting people who might well be moving from boat to boat to boat to know this about the fishing boat that they are going to go to work on? I mean, Admiral, I am sure what you are trying to do is well-intentioned, but this is truly a case of killing flies with a sledgehammer.

I vividly remember as a boatswain's mate the first time I thought I had a load line violation on the Mississippi River, only they had the captain of the port tell me, let him go. By the time he hits the mouth of the river he will burn off enough fuel to where his load line will once again be above the water. Are you serious about in the bayou country of Louisiana where they will be going from fresh to salt, the ice is melting off and being pumped out of the bilge on a regular basis enforcing load line limits on these boats, or do you think if a fisherman happens to have a particular-

ly good catch he is going to shovel it overboard because he is over his load line? Again, all of these things are well-intentioned if you are dealing with one style boat with one person who only stays on one boat his whole career, but none of these things happened in the commercial fishing industry.

One of the biggest problems they have is just getting crew members because when offshore business is good they go there and make more money. When offshore business is bad they come back, when housing is good they go build houses. When housing is bad they come back. I think the things you are looking for, Mr. Dujenski, I want to echo your remarks. I think this is overkill of the worst sort. I think Mr. Dujenski points to some very good points where you don't even have a standard on what type of bilge pump to have which is a necessity, and then you are going to start worrying about metacenters and everything else. I just think that is crazy.

Admiral HENN. Well, Congressman——

Mr. TAYLOR. Please answer.

Admiral HENN. The first thing I was going to say, I know you are a boatswain's mate and I am a snipe, which means I am an engineer, so I wouldn't want to cast any dispersions on boatswain mates, that's for sure, but I would have to tell you that the operators of those 32-footers, the operators of the 41-footers, they have a good sense of where the center of gravity is, and what the maximum heel is of a vessel.

Mr. TAYLOR. Do you have a clinometer on a 41-foot boat? If you do, they have put them on since I left.

Admiral HENN. That isn't the point.

Mr. TAYLOR. That is the point, sir.

Admiral HENN. No. What I am saying is that we aren't asking the fishermen, the general fishermen, the crew aboard the fishing vessel to have some general knowledge of the stability of the vessel. The licensing is for the operator of the vessel, not the crew, and, yes, the man should have some idea of the stability of his vessel. With regard to load line, load line applies to vessels 79 feet and over in length, and, yes, sir, other countries impose the load line requirement just like we do. Other countries are taking a much firmer stand on inspection and licensing than the United States.

I have to tell you, sir, the position the United States is in with regard to our requirements and the fishing community, we could be looked at as a substandard flag state.

Mr. TAYLOR. Well, Admiral, again, we are going to look at the same problem in two different ways. Quite frankly, what is it, 95 percent of all the drugs, waterborne drugs coming into this country make it in without getting caught. I mean, there is still oil pollution that goes on without people getting caught. I have got to believe the Coast Guard is literally like the little old lady who lived in the shoe, you have already got enough things to do. I don't think you need to be looking for an additional task, especially with a Nation that is running about a \$300 billion annual deficit.

I don't think that this ought to be a priority of the Coast Guard, and I think it is truly overkill. I mean, when you start talking about people who work on these boats, and as Mr. Tauzin said are great fishermen, but I really doubt that they are going to be able to

tell the difference between their longitudinal center of gravity and when the booms are up and when the booms are down. As a matter of fact, I vividly recall a course I had in college with the Naval commander teaching it talking about metacenters and the moving of the center of gravity and when it was all over he said there is a chart somewhere on the bulkhead of the destroyer that everyone ignores. This is coming from a Naval commander who studied that most of his life.

I think it is strictly overkill, and I want to get back to the comments that Mr. Hamburg made on the EPIRBS. I think that there ought to be a lesson right there that the Coast Guard mandated a very expensive piece of equipment that by and large just hasn't worked and has put a lot of fishermen out somewhere between \$2,000 and \$3,000 for something they really didn't need, but most of all really isn't saving that many lives.

Admiral HENN. Well, sir, my response to you would be the Coast Guard is charged with ensuring safety, safety of ships, safety of boats, safety of the crews and the skippers that man them. That is our charge. We are not looking for additional work, but I do not think that we should subsidize the fish that you and I eat, the fish gourmet that my cat eats out of a can with a hundred fishermen's lives a year. We need to do something there, sir, and we shouldn't let that continue. It has to start someplace.

I think the Fishing Vessel Safety Act of 1988 is right on. I think the work that you gave us to do, to come up with a licensing plan, to come up with an inspection recommendation that needed to be studied and now I think we are at a point where we need to make a decision what parts, what are we going to do with that. We have given you a road map. We think it is the best way to go, the proposals we made, and I sincerely believe we should not be killing a hundred fishermen a year.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman.

The gentleman from Texas, Mr. Laughlin.

Mr. LAUGHLIN. Thank you, Mr. Chairman. I would like to welcome Ms. Anderson here today since she resides in the 14th Congressional District, Mr. Chairman, I would hope that she would note she is the most distinguished person on this panel. I think so, and Wilma, I compliment you for the very tenacious hard work you do representing that important industry along the gulf coast of Texas and indeed the Gulf of Mexico, the shrimper.

Mr. TAUZIN. That was some great schmoozing there, Greg.

Mr. LAUGHLIN. Mr. Chairman, I read the other day in the Texas newspaper we are going to have an election in about a year and a half, and I don't want to take any risk from Ms. Anderson. Admiral, when they were talking about statistics, you were talking about some shipwreck statistics in response to a question of Mr. Hughes. I didn't catch what year that was. I want to get to it.

Admiral HENN. It was 1989, sir.

Mr. LAUGHLIN. All right. Do you have with you the number of those accidents or-I am calling them shipwrecks and that is not your word in the Gulf of Mexico.

Admiral HENN. No, sir, I do not have them split out geographically. We could do that. It would take me a little time. We could submit that for the record, if you would like.

Mr. LAUGHLIN. I would appreciate it. It caught my ear when Ms. Anderson was talking about it she could recall three instances in the last five years, and your numbers would make her numbers pale to obscurity. Something didn't rhyme unless all these are out on the Atlantic and Pacific coast, and if that is the case, then maybe this shouldn't apply to the Gulf of Mexico region, but I think if we just submit it for the record, it will satisfy the needs we have here for this hearing.

[The information follows:]

EIGHTH COAST GUARD DISTRICT FISHING VESSEL CASUALTIES

In 1989, the Eighth Coast Guard District, which encompasses the waters of the Gulf of Mexico along the coast of Texas, Louisiana, Mississippi, and Alabama, had a total of 30 commercial fishing vessel casualties resulting in 31 injuries and 23 fatalities. Of those 30 vessel casualties, 12 fishing vessels were considered total losses which directly led to 16 fatalities and 12 injuries.

Admiral HENN. Yes, sir, with regard to your specific question, although I can't give you a breakout of the numbers that I gave, I could refer to the National Academy of Engineering Fishing Vessel Safety report, the hard-bound book that most of us have, and in there they do show that by the regions the number of fatalities, and it shows that the North Atlantic is a little bit better than the Gulf Coast, the Gulf Coast is a little bit better than the West Coast.

Mr. LAUGHLIN. What do you mean by a little bit better?

Admiral HENN. The West Coast has the worst statistics. The Gulf Coast and Alaska are fairly close behind them. The North Atlantic is somewhat lower than those other three.

Mr. LAUGHLIN. All right.

Admiral HENN. That is on page 60 of the report, sir.

Mr. LAUGHLIN. Ms. Anderson, as I understood what you were talking about you were talking about vessels sinking.

Ms. ANDERSON. Yes.

Mr. LAUGHLIN. And statistics the admiral was giving were much broader than that. Ms. Anderson, I will also make note that when you made your comments about 1982 being a disastrous economic year, I recall-I practiced law at that time-representing some insurance companies, and we had a large number of 18-wheel trucks just vanish, and many were found or sighted in Mexico for very much, and most of those that managed to get stolen were at trucking companies that were going through extreme difficulties because of the upturn in the oil industry at that time, so your point is not lost here.

Does the licensing plan that we have before us create any particular problems and especially financial problems for your industry, Ms. Anderson?

Ms. ANDERSON. When I looked at the Coast Guard proposal in Houston not long ago, let me explain how we put our captains on board. They are usually a rig man for three to four years before we ever move them up into a captains position. The regulations I looked at does not allow that length of time. We feel it takes about five years for a man to be moved up, and to fully understand the

boat and understand what he is doing out there. My problem with the training-but my problem with the regulations is I don't like the third party idea entering this picture. That is where our problems are going to exist in our expense.

Some of our people, and I don't mean to criticize that they are uneducated, but a lot of our people are not, you know, good readers, good writers, but they know more about the Gulf of Mexico and those boats than I think my captain next to me here might know. They are educated people in their own respects, and I keep hearing about all this training, but I haven't heard anybody tell me what is the training they are going to give them. What are we talking about? They just keep saying we have got to train them, we have got to give them drills. If they would once tell us what the training is about we could probably tell them what our captains and our crews already know, and we are not-that is all we ever hear from Mr. Laughlin.

Yes, I think if it gets into a written test, the people will just walk off and leave. They are too proud to admit they can't read and comprehend, even though they can read a loran. They can read a plotter. They can read everything on that boat, but to go in and sit down and take a staunch test, no. I think you will even have resistance on just a verbal test. You have got a lot of pride sitting out there, but you have got a lot of intelligence, too, that I think our crews are not being given credit for.

Mr. LAUGHLIN. I certainly subscribe to the idea that the test that ought to be given ought to be consistent with what is needed out in the Gulf to operate one of these vessels safely. One may enjoy reading Shakespeare, but if they are given a test with that kind of language, I don't know that that is consistent with being able to operate a boat, and I know the people you are talking about because I visit with them frequently, and many chose for a lot of very good valid reasons not to go to the kind of schooling I went to, but they are very educated and they are very skilled and they are very intelligent, and I am hopeful, Admiral, that the Coast Guard will take those kind of factors into consideration.

As Mr. Tauzin pointed out, he represents some people, as I do, who don't speak English very well, and I don't know that we need to give a written test in Spanish and Vietnamese for people in the 14th district of Texas or in Cajunese over in Louisiana, but we need to be able to determine, and I think the Coast Guard, if they are going to give these kind of tests, they ought to do it where we take into consideration the skills of the people being tested.

Admiral HENN. Congressman, you are absolutely right. We agree with you 100 percent. There will be no test given. The training will be classroom training, whether it be in a building or on the back of a pick up truck. Some of that is already going on. Certainly the type of training we are looking at is basic seamanship, basic stability, and personal survival, those are the type of things that would be taught. The certificate given would show that the person attended, participated, and understood those general concepts.

Mr. LAUGHLIN. Well, I was never a boatswain's mate like my neighbor here from Mississippi that disappeared on me, but I would hope that you would regionalize this also because what may be a good, safe operation in the Texas coastline or Louisiana coast-

line may not be in the North Atlantic or the North Pacific coastline of our country, and it seems to me that certainly I would not be in a very good position to give advice to the Coast Guard how to train, but it would seem to me you would want input from the very people who-and at least in the instance where Wilma and I live and operate, people have done this for several generations and a lot of their knowledge and skills are probably not textbook, so I would hope you draw upon the skills of the people who have made their living for several generations doing this type of work.

Admiral HENN. Absolutely, sir. That is why I pointed out when the Chairman asked a similar question that the plan provides for a seven-year phase-in period, the first two years being a hiatus where, in fact, we would be developing the training with the various skills and, yes, it must be specific region to region, and that is where you put in the training that those fishing in Alaska, they do a certain type of fishing, where people in the Gulf do another type of fishing.

You need to put what we would call local knowledge in a typical Coast Guard exam, yes, sir.

Mr. LAUGHLIN. Good. Ms. Anderson, the last question I have is for you, and when the volunteer safety programs were being discussed earlier, I heard you respond that the Coast Guard did all they could. I detected from the way you answered the question you felt the program was curtailed too soon. My question to you is what changes from your viewpoint would you recommend be made to the Voluntary Safety Program in order to make it beneficial, and secondly, and you may want to answer this first, could the program be salvaged by making the changes that you would implement or is it too late and should it just be shelved and remain on the shelf?

Ms. ANDERSON. Well, really why I was referring to 1982 is I did not feel that Coast Guard should take the brunt that their program failed when it was not that basis why it failed. It was the economy and why you didn't see a decline in sinking and vessel disappearance, I think-I can only speak like from the Gulf of Mexico, and I know the conditions of our boats, I am down on them, I am down around the people a lot. In my opinion they are very seaworthy, they are probably the most stable boats, but we don't fight the weather like a bunch of other people do. We work on them constantly. There is a lot of maintenance that goes on, and I don't think you are going to have a problem, like I said, with the industry dealing straight with Coast Guard under an inspection deal.

The problem the industry doesn't like, and I will iterate again, is when you bring the third parties in is when the problems start. When we have to go through surveys.

Mr. LAUGHLIN. Let me interrupt you for a minute. Tell us who you mean by third parties?

Ms. ANDERSON. This is the new work force that you are going to create out there to run the drills, to run the schools and to run the surveys. They are not in existence at this time.

But once they come in the picture, then that force will be in-between us and the Coast Guard and that is where the money is going to start accruing with these regulations and the fight will come down. We prefer to deal straight with the Coast Guard. We have a good working relationship with them.

We may argue and fight a little bit in the Gulf of Mexico. But it is when you get new people in there creating new jobs and the bureaucracy starts and they get entrenched, you will absolutely strangle the industry and that is what we are objecting to.

The regulations are too stringent when you come to the stability. I think every boat in the Gulf will meet the stability test. But to put it in there now when they are already constructed, I would say put it in there afterwards. That is the biggest hassle.

There is some fine print in the regs that we would like to look at like the additional electrical power in case this fails or that one. You see a lot of preventive maintenance in there that is very costly. On the survival craft I have a lot of opposition, because of the location where we are at and the way our investigations are constructed.

What we have up there in the craft right now is sufficient for our crews. The changes will cost us tons of money and it won't fit on top of what we have now. We don't feel we need the immersion suits when you have 60 degrees year round in the Gulf. We don't have the cold water.

We are going to have expensive immersion suits that will sit in the locker and we will have to replace them year after year because they deteriorate from lack of use.

I think the regulations are over-ambiguous. When they come in and separated the 50 to 79 foot range from those boats is what is affecting us because we operate outside the 79 miles, we look at what we are doing in our inspection but it is simply in the stability, the load lines, the water on deck and the intact energy that they are talking about. It is when you get those third parties in there-and I have nothing against the insurance companies, no need to-I would say, Mr. Laughlin, the condition of the industry in the Gulf, the insurance companies don't have to worry about us meeting regulations.

If we have 25 percent of the boats in the Gulf covered by insurance today, that is going to be fortunate. The underwriter premiums got so high and economics got so bad that the majority of the fleets have had to drop their insurance. I know that is a shocker to the people here today.

You have tremendous boats in the Gulf that cannot now buy insurance to cover them. You have crews out there uncovered because they are trying to make ends meet to stay alive. They are cutting coverage in any place that they can and we just simply do not have the money to meet these kind of regulations we are looking at because we are falling into the 72 to 79 foot category.

We are going to hit the stringent part like the big vessels and we don't have the money to make it. What we are saying is with OPRA we are getting hit hard in the State of Texas on the oil spill, they are treating us like big dangers.

We have regulations that are strangling us along with the new Coast Guard regulation. What we are saying is my board asked me to tell you people today, you have to decide do you want the fishing industry or do you not? Let us know. There is no use in these people borrowing more money to stay in when they cannot repay the loans.

But when these fleets are running with no insurance, and I am sure if you check all regions that is where they are cutting expenses and that is where the problem is going to exist. The insurance companies are using these regs to drive the premiums out of sight.

Thank you.

Mr. LAUGHLIN. Thank you, Ms. Anderson. I appreciate your participation in the panel today.

Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you.

Mr. Lancaster.

Mr. LANCASTER. Mr. Chairman, I regret I had to go over to the Senate side to defend a base on my district in the closure list. I will simply wait and review the notes taken by my staff and if questions are to be submitted to the record, we will do so at a later time.

I appreciate your testimony.

I would simply say that, as Ms. Anderson just indicated, we hear increasingly from fishermen in our area that we are fast approaching that point where regulation, though well-intended, may very well kill an industry. I hope that we will not be so short-sighted as to do that, but at the same time of course we need to make certain that we are putting into effect reasonable regulations that do protect the safety of the crews, as well as protect the vessels.

Thank you for your testimony. I regret that I was not here in order to hear the testimony or the questions or to know what questions might be appropriate at this time.

Mr. TAUZIN. Thank you, Mr. Lancaster.

Before we wrap, Admiral, I think it is important that we all turn to page 4 of the background memorandum we prepared for this hearing.

Again, I want to thank the staff for an excellent job in preparing this memorandum and this hearing.

The memorandum indicates that it costs the individual fisherman for education and licensing between \$452 and \$1,252. On page 5 you indicate part of this cost is made up in user fees imposed under Budget Reconciliation Act of 1990. On page 6 you indicate there would be at least \$8 million of new inspection fees that could escalate substantially depending on the coverage.

That is \$700 per vessel, calculate 50,000 vessels. We are talking about some major new expenses for the fishermen of America in both education, licensing, training and inspection. If calculations are right, we are talking possibly about as much as \$1,500 per operator and as much as 500 to 1,000 or so for each fisherman.

That is a mighty big tax at a time we are talking about taxing and spending in Washington. That is a mighty big tax to ask a fisherman to shoulder when he cannot even buy insurance for his vessel; don't you think?

Admiral HENN. Well, sir, with regard to inspection, the average cost, and we are talking about vessels greater than 79 feet as far as the Coast Guard inspection, is around \$800 per vessel. Yes, that reflects the user fee cost.

With regard to licensing, yes, the cost is going to range anywhere from around \$450 to \$1,250. But those are the costs of enhancing

the safety. Those are the costs of saving lives and over 250 vessels going down a year. I don't see a way around those costs, sir.

Mr. TAUZIN. How many vessels are still going to go down if we have imposed all those costs?

Admiral HENN. I don't know, sir.

Mr. TAUZIN. Nobody knows, sir. That is the big question. Are we imposing too much cost and too much regulation and how much will it really save? Miss Anderson, you told us as many as 75 percent of the vessels in the Gulf are uninsured today.

What does insurance cost you?

Ms. ANDERSON. The only boats that will probably have coverage on them is the fishing vessel obligation guarantees. The only reason that insurance coverage is there, I know because I have one of them. It runs me \$23,000 per year. That is per \$100,000 liability.

It used to be you could get half-a-million or \$1 million for that figure. The liability is the big factor. If we don't carry that insurance, the government has the right to call the loan on the vessel. So you maintain. The banks and some of the other lending institutions are not screaming about insurance. They would rather have their payments and that is how it is being looked at. I know that the 485 FBOG loans do have insurance on them, but that is all I can verify.

Mr. TAUZIN. How do you react to the numbers I cited?

Ms. ANDERSON. I don't think you will get out of there for that. That is a very cheap figure.

Mr. TAUZIN. Mr. Adler?

Mr. ADLER. That may be cheap for her, but for my boys that is a sizable thing. Remember, as I said, they are only bringing in \$40,000 or \$50,000 total for the entire year and half of that is already gone in expenses. As far as safety equipment goes, we have already spent thousands of dollars for safety equipment.

I have a survival suit on my boat. I have a 40-foot documented vessel and I am alone except for the sea gulls. That survival suit that I spent so much money for, I will just go down with the ship. I can't get into that thing. It seems to me it would be useless.

Of course, I will probably walk ashore from where I fish anyway. But some of this stuff, my understanding is that it is for further off. We have already spent a lot of the money and this is a lot of money I—

Mr. TAUZIN. How does the Advisory Committee react to these numbers.

Mr. EASLEY. I think, Mr. Chairman, the committee pretty well has come up with the same kind of numbers when they were sitting there talking about it, that that would be the cost. What we were trying to do is respond to the direction of Congress which said come up with a licensing plan. If you are going to have one we think what we were able to work out with the Coast Guard is probably the way to go but—

Mr. TAUZIN. Does anyone else want to comment?

Admiral HENN. Mr. Chairman, although I cannot tell you how many vessels we would save or how many fishermen's lives we would save to the exact number, we did do the regulatory evaluation when we put the regs together. The regulations that we have with regard to training and equipment at this point, we estimate

the cost is about \$23 million a year. We estimate that the potential savings, as far as lives and vessels, can be as high as \$50 million. So we think we are going to see about a two-to-one ratio there.

Mr. TAUZIN. Mr. Dujenski.

Mr. DUJENSKI. Mr. Chairman, I have some information that the Admiral probably has not had a chance to get that is specific to the Pacific Northwest. You asked, and it has been asked over and over, are there any figures about whether these regulations save lives. I want to say definitely they have.

Based on the figures out of the Alaskan waters, they estimate that the casualty rate is about the same, however, they estimate that there are approximately, just from 1990, 1991, 1992, in that timeframe, approximately 155 to 157 people that have been saved as a result of the equipment on board.

Mr. TAUZIN. Mr. Green, would you like to comment on those numbers?

Mr. GREEN. On the matter of whether the cost is worth the results, I feel that the biggest problem is to identify something that clearly has returns. This is where I have a great deal of problem with the proposed inspection program.

On the training part, I think that there was a very clear case made here that it should be regionalized. I agree with that because Mr. Hughes, I believe it was, mentioned the clam boats that carry the loads.

In Alaska they carry huge traps and in other areas they don't carry deck loads. So regionalization of the training is something that should be done. It is not an insult to the fishermen. It is to fill in a few gaps particularly where there are special things like carrying loads on deck. But I just feel that the proposed inspection is an overkill.

Mr. TAUZIN. Let me see if my colleagues have any last questions.

I want to point out to you that we had a hell-burning fight over a \$25 sticker for recreational boat owners. We are talking here about the costs ranging maybe as high as \$2,000 and maybe more before we are finished. That is a big tax.

I tend to have the same cautionary concerns, while we certainly want to save lives and we can't pinch pennies when it comes to that. On the other hand, we want to be sure what we do is cost-effective and that the things we do relate to the things that cause accidents and fatalities.

I would caution you, Admiral Henn, to examine that closely because I can see the outcry coming from very poor fishermen, very marginal operations about a cost that will drive them out of business.

Now, do any of my colleagues want to join? Are there any final comments?

Mr. Easley?

Mr. EASLEY. Mr. Chairman, the licensing costs, as best as we can determine, would be cheapest under the system that the Coast Guard proposed, it would be cheaper than the traditional Coast Guard system, particularly with the fees coming in under the Budget Reconciliation Act for the Coast Guard. We would not only need time, but then you go to one of the cram schools to learn how to take the Coast Guard test and then you take the Coast Guard

test. Particularly for people who live in remote areas, it could mean a long trip, and quite costly in lots of cases to take the test. This way they could mail it in and maybe associations could bring them to them.

Mr. TAUZIN. There may be ways to minimize the costs. A lot of it is in travel, lodging and food. I caution you as we go into implementation that those ways should be sought out to avoid the potential reaction we will get from fishermen.

Mrs. Anderson.

Ms. ANDERSON. So my friend here doesn't get mad, when you asked me about the price, I said if you are so lucky to get off that cheap. I don't see it in those factors when it is all said and done.

Mr. Chairman, I think the fishing industry has been overstated on casualties and hazardous. I really think it is a tremendous industry, it is a way of life and it has a lot of culture to it. I would hate to see it regulated to the point that it did not exist.

I think maybe sometimes we overstate and over-exaggerate the conditions and I don't think they are there.

Thank you.

Mr. TAUZIN. Perhaps we can close on that note, Admiral, that there is one concern that continues to hang around this whole issue which is how good are those figures, how accurate is the information, and how targeted is the information towards the kind of fisheries and conditions. Someone stated that the sea is rather unforgiving and that is true.

But we do know that there is more forgiveness in warm waters as compared to cold waters. There are different degrees of hazards. It is important that we identify with good information and statistics where the real hazards lie and what caused the accident or a fatality so we can not only make sure the regulations are targeted correctly, but also that they make sense to the people who have to live with them.

The last thing I want to see us do is impose regulations on fishermen that don't relate to the real hazards in their environment with their kind of fishing.

If I can close with that, Admiral, the biggest concern is that the regulations make common sense to the people who have to live with them. If you can review them in that light, I think we will be better off in the end.

Are there any further comments from anyone?

It has been a good hearing. This is not the last one. We would like to revisit with perhaps more attention on particular parts of these issues.

The hearing stands adjourned.

[Whereupon, at 4:15 p.m., the Subcommittees were adjourned; and the following was submitted for the record:]

U.S. Department
of Transportation
**United States
Coast Guard**



Commandant
United States Coast Guard

Washington DC 20593
Staff Symbol
Phone

DEPARTMENT OF TRANSPORTATION

U.S. COAST GUARD

STATEMENT OF ADMIRAL ARTHUR E. HENN

ON COMMERCIAL FISHING VESSEL SAFETY

BEFORE THE

SUBCOMMITTEES ON COAST GUARD AND NAVIGATION AND

FISHERIES MANAGEMENT

COMMITTEE ON MERCHANT MARINE AND FISHERIES

UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 15, 1993



**Rear Admiral A. E. "Gene" Henn
Chief, Office of Marine Safety, Security
and Environmental Protection
United States Coast Guard**



Rear Admiral Arthur Eugene Henn became Chief, Office of Marine Safety, Security and Environmental Protection at Coast Guard Headquarters, Washington, D.C., in June 1991. Prior to this assignment, Rear Admiral Henn was Commander of the Maintenance and Logistics Command, Atlantic.

Earlier assignments included that of Operations and Engineering Officer on the Coast Guard cutter Chincoteague; Assistant Chief, Merchant Marine Technical Branch, New Orleans, LA; and Special Project Action Officer, Merchant Marine Technical Division, Coast Guard Headquarters.

He was also Marine Inspector and Senior Investigating Officer, Marine Inspection Office, Philadelphia, PA; Chief, Engineering Branch and Chief, Marine Technical and Hazardous Materials Division, Coast Guard Headquarters; Captain of the Port, New York; Commander, Group, New York; Commander, Subsector, New York, Maritime Defense Zone, Atlantic; and Chief, Operations Division and Chief of Staff, Eighth Coast Guard District, New Orleans, LA.

A 1962 graduate of the Coast Guard Academy, Rear Admiral Henn earned combined master of science degrees in naval architecture, marine engineering and metallurgical engineering from the University of Michigan in 1968. Also, he is a 1982 graduate of the Army War College.

His decorations include the Legion of Merit, two Meritorious Service Medals, four Coast Guard Commendation Ribbons, Coast Guard Unit Commendation Ribbon, Coast Guard Achievement Medal and two Commandant's Letter of Commendation Ribbons.

Rear Admiral Henn is a member of the American Society of Naval Engineers, American Bureau of Shipping, International Cargo Gear Bureau, Marine Index Bureau, Marine Engineering Council of Underwriters Laboratories and the Sealift Committee of the National Defense Transportation Association.

During the past 20 years, he has represented the United States Coast Guard as a member of delegations to the International Maritime Organization, a United Nations specialized agency. He heads United States delegations to meetings of the Maritime Safety and Marine Environment Protection Committees of IMO.

A native of Cincinnati, Ohio, Rear Admiral Henn is married to the former Susan Frances Pedretti, also from Cincinnati. They have two grown children, David and Jennifer.

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
STATEMENT OF
ADMIRAL ARTHUR E. "GENE" HENN
ON COMMERCIAL FISHING VESSEL SAFETY
BEFORE THE
SUBCOMMITTEES ON COAST GUARD AND NAVIGATION, AND
FISHERIES MANAGEMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES
JUNE 15, 1993

Thank you Mr. Chairman. I appreciate the opportunity to meet with you again to tell you about the Coast Guard's efforts in implementing the Commercial Fishing Industry Vessel Safety Act of 1988, 46 United States Code (U.S.C.) 4501 et al (the Act).

It has been just under two years since I first appeared before these subcommittees, and since the final rules required by the Act were published in the Federal Register. Much has happened in these two years. Today I would like to give you an overview of what we have done to implement key provisions of the Act, including publishing regulations concerning safety standards, establishing the Commercial Fishing Industry Vessel Advisory Committee, publishing the Coast Guard plan for Licensing Operators of Commercial Fishing Industry Vessels, and publishing Coast Guard recommendations on fishing vessel inspection. The plan and recommendations I just mentioned were both forwarded to Congress last year. I will also give you an overview of how implementation and enforcement of the new regulations are being accomplished.

The Act Congress passed in 1988 contained major new equipment and design requirements affecting an estimated 111,000 vessels and 250,000 fishermen. In some cases, the Act was very specific with regard to what equipment should be required, and on which vessels. Its requirements were comprehensive and the regulations we published were proportional in complexity to vessel length, which is an indicator of risk. The vast majority of the required safety regulations were published on August 14, 1991, and became effective one month later. The regulations closely mirror the statute. There are four tiers of equipment and design requirements. The basic tier applies to all vessels. The second tier applies to documented vessels operating outside the boundary line (as defined in 46 CFR part 7). These are typically larger vessels that operate farther from shore and are at a somewhat greater safety risk. The third tier addresses vessels that operate with more than 16 persons on board, and are newly constructed, or have undergone major conversion. The fourth tier addresses stability for newly constructed and existing fishing vessels 79 feet or more in length. Some of the regulations in the first two tiers are phased in over time. For example, liferaft and survival craft requirements are being phased in over four years. Larger vessels operating in the most severe environments were required to install survival craft in September 1992. Vessels operating in the most benign of environments have until September 1995 to comply with survival craft provisions.

I mentioned previously that the vast majority of safety regulations were published in 1991. However, as a result of the more than 500 letters received in response to the Notice of Proposed Rulemaking published on April 19, 1990, three issues were separated from the original proposal, to be dealt with later. These issues formed the basis of the Supplemental Notice of Proposed Rulemaking (SNPRM) published on October 27, 1992. What was controversial in April of 1990 remains controversial today and, consequently, we are grappling with over 780 comments on the SNPRM. Before I go on with details on these proposals let me say that the Coast Guard encourages comments on and seeks widest dissemination of all proposals. Almost immediately after the October 1992 proposal was published, we sensed continuing controversy surrounding these issues. Some requested public hearings. Because of our desire for comment on this proposal, a toll-free telephone number was established and the comment period was extended to from 60 days 120 days, to enable those affected to voice their comments on the record. This effort was an unqualified success -- almost 800 comments were received.

I would like to briefly summarize our proposals on the seven issues addressed in the October 1992 SNPRM. The first three are holdovers from the Final Rules of August 14, 1991; the last four are new issues.

1. Stability for new vessels less than 79 feet in length.

Vessels less than 79 feet in length account for more than 99% of the U.S. fishing vessel fleet. Based on the

comments received previously on the final rule, we decided to split this category of vessels into two groups, vessels that were less than 50 feet in length, and vessels that were 50 feet and greater, but less than 79 feet in length. For vessels less than 50 feet in length we concentrated on two main issues, human error and unintentional flooding. We proposed that each vessel have: simple instructions on stability designed for the operator; a letter of attestation signed by the owner and the operator that states that these operating instructions exist, are understood, and are being utilized; and watertight bulkheads installed around spaces such as the engine room, lazarette, and fish holds. Vessels greater than 50 feet but less than 79 feet in length would be required to meet the same requirements as vessels greater than 79 feet in length (as contained in 46 CFR part 28 subpart E), except they would not have to meet either the severe wind-and-roll or water-on-deck requirements (sections 28.565 and 28.575 of 46 Code of Federal Regulations).

2. Survival Craft Requirements for Vessels Carrying Less Than 4 Persons On Board, Operating Within 12 Miles of the Coastline. The final rule published in the Federal Register in August 1991 provided a temporary exemption for these vessels. The SNPRM proposed to remove the exemption and modify the survival craft requirements.

3. Administration of Exemptions. 46 U.S.C. 4506 (a) allows exemptions for good cause when the safety of the vessel and those on board will not be adversely affected. The Coast Guard's current policy is to require that all exemption requests be submitted to Coast Guard Headquarters for final disposition. The SNPRM proposes that -- due to the specific nature of each fishery, the cognizant Coast Guard District Commander's familiarity with the commercial fishing industry and local conditions within his District -- the District Commander decide the final disposition of the exemption requests.
4. The Aleutian Trade Act (ATA). The ATA amends the Act and provides for continued cargo service to remote communities in Alaska, while ensuring increased safety standards for fish tender vessels operating in the Aleutian Trade. Our proposed regulations closely mirror the amended Act, which gives the Secretary of Transportation (the Secretary) authority to require that fish tender vessels meet safety standards set forth in 46 U.S.C. 4502 (c). Standards in this section address equipment such as lifesaving and fire protection equipment, as well as standards of design for fuel, ventilation, electrical and insulation systems. The SNPRM requirement that ATA vessels meet both equipment and design requirements has proven to be very controversial. The Coast Guard finds itself in a quandary on this issue. The language in the Act states

"...the Secretary may prescribe regulations establishing the standards in paragraph (2)..." The standards referred to in (2) are those mentioned above. However, the ATA did not amend section 4502(e) of the Commercial Fishing Vessel Safety Act of 1988 which states the Secretary, "May not require the alteration of a vessel or associated equipment that was constructed or manufactured before the effective date of the regulation." It was the Coast Guard's understanding that Congressional intent was to require structural modifications on these vessels. Thus the SNPRM reflects this.

5. Acceptance Criteria for Instructors and Course Curricula. Currently the master or the individual in charge of a commercial fishing industry vessel is required to ensure that drills are conducted and instruction is given to each individual on board at least once a month, and that each individual knows how to respond to certain emergencies. After September 1, 1994, individuals conducting these drills must be trained in the proper procedures for performing instruction and conducting drills by an instructor qualified through a curriculum accepted by a Coast Guard Officer-In-Charge, Marine Inspection. We are proposing a procedure for the acceptance of instructors and course curricula that will be administratively efficient and flexible, but will ensure that the Coast Guard accepted

instructors meet minimum standards of qualification, and the curricula meet minimum standards of content and consistency.

6. Termination of Unsafe Operations. We are proposing criteria for the termination of unsafe operations under 46 U.S.C. 4505.
7. Stability for Load Line Assignment. In this section, we are proposing stability regulations for all commercial fishing industry vessels that operate with a Load Line Certificate. In the past, any commercial fishing industry vessel that was required to have a load line had to demonstrate adequate stability. This section merely publishes the established criteria so that the public may provide comment.

I would now like to address in more detail the issue of stability for commercial fishing industry vessels which are less than 79 feet in length. The Commercial Fishing Industry Vessel Safety Act of 1988 required the Secretary to prescribe regulations for the operating stability of all new fishing vessels, fishing vessels that undergo a major conversion after the effective date of the regulations, and all fishing vessels that undergo a substantial alteration in a manner that adversely affects the vessel's operating stability. This was included in the Act because the vast majority of deaths in this industry (approximately 70%) are related to inadequate stability. For consistency, the use of the existing definition of "substantial

alteration" was used in this proposed rulemaking package. Based on comments received on this proposal, we determined that criteria associated with the definition of "substantial alteration" may be too stringent for vessels less than 79 feet in length, particularly those vessels less than 50 feet in length. We are taking the necessary steps to ensure an equitable resolution is provided.

Realizing that stability is a very technical issue, we wanted to keep the standards for these vessels as simple as possible, yet at the same time address the primary safety concerns. In drafting the stability proposals in the SNPRM, our primary goal was to make fishermen aware that every alteration made to a vessel may potentially affect its stability. We never intended to preclude vessel alterations and/or place a severe financial hardship on fishermen.

I firmly believe that the proposed stability requirements can be met by new vessels. However, difficulties arise in the application of these proposals to vessels that undergo substantial alterations. We are currently in the process of reviewing all of the comments received on the SNPRM and are reevaluating our proposals.

A second major provision of the Act authorized the creation of the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC). As you know, CFIVAC has and continues to play a vital

role in implementing The Act's provisions. Since its establishment, CFIVAC has been prolific in its advice to the Coast Guard. One measure of the effectiveness of CFIVAC lies in the fact that over 100 motions have been passed by CFIVAC, of which more than 75% have been adopted by the Coast Guard. CFIVAC advice has shaped the Coast Guard's licensing proposals which, as we speak, are being considered by this Congress. I'll say more about that later. Much work lies ahead. CFIVAC input will be vital in ensuring that the licensing authority we currently seek is reasonable, practicable and in the best interest of safety. All the regulations under the Act are new and many initiatives lie ahead.

A third major provision of the Act required the Coast Guard to prepare and submit a plan to Congress for the licensing of operators of federally documented fishing, fish processing, and fish tender vessels. This requirement was based on the historically poor safety record of the commercial fishing industry and on congressional desire to improve that record. Commercial fishing is an extremely dangerous occupation, and the Coast Guard considers an increase in the skill level of vessel operators to have the most promise for improving the industry's safety record. The Coast Guard has identified human factors as a critical element in fishing vessel safety issues.

On January 13, 1992, the Secretary of Transportation forwarded the licensing plan to Congress. In the plan, the Coast Guard

proposed that all operators of federally documented commercial fishing industry vessels of less than 200 gross tons be licensed. The goal of the licensing plan is to reduce the high casualty rate within the fishing industry.

The licensing plan calls for an innovative licensing system that would allow the Coast Guard to approve and authorize training organizations and third parties to examine and certify individuals that meet professional knowledge and skill levels required for a license. There will be no Coast Guard examination, but applicants must attend a Coast Guard-approved course and receive a certificate of completion.

This use of third party training and certifying organizations will allow applications and associated paperwork to be processed through the mail. This will minimize travel and work interruptions for individual fishermen; these considerations are a high priority with Commercial Fishing Industry Vessel Advisory Committee members.

Eligibility for a license will depend on the applicant meeting requirements such as experience, citizenship, and health and chemical testing for dangerous drugs. Under the rulemaking process, applicants who can provide evidence of experience on fishing vessels prior to the implementation date of the plan will be considered to have met that eligibility requirement.

Since the Coast Guard is recommending private training be accepted in lieu of Coast Guard testing, each applicant will be responsible for the training costs incurred. The exact cost of the training is unknown at this time, but will vary depending upon distance traveled, lodging, and tuition. However, the maritime training industry has historically accommodated the merchant mariner by conducting local training at competitive prices. The training industry estimates the tuition for a course to be approximately \$200. Costs resulting from the Coast Guard application requirements include: a complete physical exam (\$75), drug-test screening (\$60), Coast Guard user fee for application evaluation (\$65), issuance of a license (\$35), and an FBI criminal record check (\$17). Excluding travel costs, fishermen will be expected to incur an average initial cost of \$452 to comply with the proposal. Depending on the distance traveled and cost of lodging, the expense to the fishing industry as a whole may range from \$5.1 million to \$12 million per year.

The licensing plan promises to enhance marine safety by improving professional competency among fishing vessel operators, and reducing the risk to Coast Guard search and rescue personnel. Compared to recreational vessels, fishing industry search and rescue cases tend to be more serious in nature, require more resources, and require more than twice the time to resolve.

On May 19, 1993, the Secretary forwarded the Marine Safety Act of 1993 to Congress. Contained in Title V of the Marine Safety Act

is proposed legislation to require licensing all operators of federally documented commercial fishing industry vessels. The CFIVAC wholeheartedly supports the licensing of commercial fishing vessel operators with the emphasis on training. Under present law and Coast Guard regulations, larger fishing vessels of at least 200 gross tons operating beyond the boundary line are already required to have licensed masters. However, the Coast Guard presently lacks the legislative authority to require commercial fishing industry vessels of less than 200 gross tons to have a licensed operator on board.

The Act also required the Secretary to conduct a study of the fishing vessel safety problems, make recommendations regarding whether a vessel inspection program should be implemented and, if a program is desirable, define its nature and scope. This study was conducted utilizing the National Academy of Engineering (NAE) and in consultation with the National Transportation Safety Board and the CFIVAC. The Act further required the Secretary to conduct a study of fish processing vessels that are not surveyed and classed, and to make recommendations regarding what additional hull and machinery requirements should apply to these vessels. This study was conducted for the Coast Guard by the Worcester Polytechnic Institute in consultation with the CFIVAC, and with representatives of persons operating fish processing vessels. These studies and Coast Guard recommendations were forwarded to Congress on November 12, 1992. One of the recommendations of the study of safety problems in the fishing

industry was to institute a compulsory inspection program. Similarly, the study of fish processing vessels concluded that classification, or meeting the established construction and material standards of the American Bureau of Shipping (ABS) or similarly qualified organization, has a positive influence on safety and that it could be an integral part of a program to improve the safety record of this portion of the industry. Both studies point to mandatory, regular examinations of the fleet to ensure standards are met and maintained. The CFIVAC endorsed recommendations specifically for self-inspection for the entire industry, and the development of additional standards for all existing commercial fishing industry vessels 79 feet and greater in length. Recommendations from these studies as well as CFIVAC input were utilized by the Coast Guard in formulating its recommendations.

The Coast Guard recommended a mandatory, tiered inspection program for commercial fishing industry vessels, based on vessel length. The NAE study concluded that not only were fishermen more likely to die on the job than workers in most other U.S. occupations, but the fatality rate increased dramatically with increasing vessel length. Examples of this can be found in Coast Guard data which illustrate that, for 1,000 like sized fishing vessels there are likely to be 16 fatalities per year on vessels 79 feet and greater, but only 4 on vessels in the 65-78 foot range. When fatalities are analyzed at a rate per 100,000 workers, vessels in the 79 feet and above class would sustain

twice the number of fatalities as those in the 65-78 foot range. For this reason, the Coast Guard recommended calling for increasingly higher levels of compliance verification and standards as vessel length increases. The Coast Guard plan calls for:

- Self-examination for all commercial fishing industry vessels, new and existing, less than 50 feet in length. This category represents approximately 93% of the fishing fleet. The existing requirements of the fishing vessel safety regulations in Title 46 Code of Federal Regulations (CFR) Section 28 would be applicable.
- Third party examination for all commercial fishing industry vessels, new and existing, of a length greater than or equal to 50 feet but less than 79 feet. Six percent of the fishing fleet falls in this category. These vessels would also be examined for compliance with the fishing vessel safety regulations in Title 46 CFR 28.
- Coast Guard inspection and load line assignment for all commercial fishing industry vessels, new and existing, greater than or equal to 79 feet in length. Only one percent of the fleet falls in this range. These vessels would be required to meet the fishing vessel safety regulations in Title 46 CFR 28, as well as load line requirements and additional hull and machinery standards. For new vessels, hull and machinery standards would include design and construction to classification society standards, and for existing vessels, similar requirements as deemed necessary by the Coast Guard.

The proposal for additional standards for all vessels 79 feet or greater in length would have the additional advantage of alleviating existing difficulties with respect to the three fishing industry vessel definitions contained in 46 USC 2101. It would make safety requirements for each class of vessel identical within each length-based category, regardless of whether the vessel is defined as a "fishing vessel," "fish tender vessel," or "fish processing vessel."

As I said in my testimony two years ago, the two primary causes of fishing vessel casualties are related to human factors and vessel/equipment failures. Licensing and inspection are directly targeted at those causes.

Now I'd like to shift from implementation of the Act's provisions, to enforcement. Even before the regulations were published, strategies were being developed by the Coast Guard that focused on public awareness, voluntary dockside examinations of vessels, and at-sea boardings.

A cornerstone of our implementation strategy involves a "no cost, no fault" dockside examination program which seeks to educate the industry in a non-adversarial manner. We have enlisted the resources of various programs throughout the Coast Guard to help in this effort. Coast Guard regulars, Reserves, and Auxiliarists are involved in this program. We have also developed a program

for third party organizations to conduct voluntary dockside exams. The program utilizes decals, checklists, and informational pamphlets. The pamphlets have been in such demand that over 250,000 copies have been distributed. When a vessel is examined and found in compliance, a decal is issued. Maintenance of the conditions which resulted in issuance of the decal will insure no violations of those conditions are issued if the vessel is boarded at sea. In-house training programs, including resident training for our dockside and at-sea boarding personnel, have also been developed.

In addition, the Coast Guard is conducting at-sea enforcement boardings of fishing vessels in conjunction with search and rescue, and other missions, such as fisheries law enforcement and drug interdiction. Vessels displaying a decal are not immune from boarding, but if the boarding party has several prospective targets from which to choose, and all other factors are equal, those vessels displaying a decal will be lower priority. At-sea boardings focus on critical safety equipment including: personal flotation devices/immersion suits, Emergency Position Indicating Radio Beacons (EPIRBs), fire extinguishers, and distress signals.

In fiscal year 1991, 16 new fishing vessel safety coordinators were brought on board to coordinate district-wide activity related to this program. This includes public education, training for Coast Guard personnel, and liaison with the industry. In fiscal year 1992, 45 new fishing vessel safety

positions were created at Marine Safety Offices. Most of these positions are filled, and the people are promoting and conducting the voluntary dockside examinations. As indicated earlier, existing resources at other Coast Guard units are also participating in the program.

During the first 12 months after publishing the regulations, before the aforementioned 45 new people were in place, approximately 3,600 dockside exams were conducted. About 50 percent of the vessels were found to be in compliance. At the same time, 7,673 at-sea boardings were completed and 943 safety related violations issued; 116 voyages were terminated due to "especially hazardous conditions." Now that the fiscal year 1992 personnel are almost all in place, we expect to see the number of voluntary dockside exams and the compliance rate to increase proportionately.

In closing, I know you want to know whether the new regulations have been effective in reducing casualties. The answer is a qualified yes. In January 1992, we implemented a new accident reporting system. Consequently, the data since 1992 can not be directly related to accident data in years prior to 1991. However, using 1992 as a baseline, we should be able to offer a very accurate picture of the effectiveness of the Fishing Vessel Safety Program. Quite often however we do see evidence of the positive effect the new regulations are having. I'd like to cite just one case in point.

At 8:10 a.m. on September 22, 1992, the North Pacific Search and Rescue Coordinator in Juneau, Alaska received an Emergency Position Indicating Radio Beacon (EPIRB) signal that the fishing vessel MAJESTIC was in distress, 70 miles south of St. Paul Island, in the Bering Sea. Coast Guard Air Station Kodiak launched an HC-130 fixed wing aircraft and at 11:30 a.m., flying below the 1,000-foot cloud ceiling in two-mile visibility and heavy rain, the HC-130 located an overturned liferaft. At 11:50 a.m., the aircraft crew located two persons in the water. The 378-foot Coast Guard Cutter RUSH launched a helicopter from 117 miles away. After refueling on St. Paul Island, the helicopter began searching. At 12:15 p.m., the helicopter located and began hoisting the survivors. By 12:40 p.m., all five crewmembers were aboard the helicopter. The vessel was equipped with the new satellite EPIRB and all crewmembers were wearing immersion suits. Without these devices, now mandated in the regulations, the outcome of this case would likely have been much different. This is but one example. Thank you Mr. Chairman. I would be pleased to answer questions.

Testimony of Joe Easley, Chairman
Commercial Fishing Industry Vessel Advisory Committee
for
U.S. House Representatives Committee on
Merchant Marine and Fisheries
The Subcommittees on
Coast Guard and Navigation & Fisheries Management

Mr. Chairman, members of the Committee, my name is Joe Easley, I am the Administrator of the Oregon Trawl Commission and Chairman of The Commercial Fishing Industry Vessel Advisory Committee. I would like to thank you for the opportunity to testify here today on the subjects of the Coast Guard's Supplemental Notice of Proposed Rulemaking published October 27, 1992, and the proposed licensing and inspection plans submitted by the Department of Transportation to Congress.

The Coast Guard has received over 100 motions from the Committee and has acted favorably on about 75% of them. The Committee has suggested several ways of doing business that were not of the traditional Coast Guard way. The members of the Committee have been more interested in training of fishermen to handle situations at sea than regulations.

On the Proposed Rulemaking, concerning stability, let me say that this is a very technical issue and I am only a layman not a marine architect. I have been actively involved in the building of three fishing vessels, which were built to a marine architect's plans, and I owned and operated several vessels.

The letter of attestation of compliance with stability instructions that would be required for all sizes of fishing vessels, if the rule is put into place, would require a full stability workup. I have not been able to find a competent marine architect who would issue stability instructions without knowing what the stability of a vessel is, nor would I except one to. To workup the stability of a vessel that has no line drawings available, would require the dry docking of the vessel and getting the lines from it, then a incline test would most likely need to be done. After that the architect would have to put in a lot of computer time to come up with instructions that would mean anything. I estimate the minimum cost for this to be 8 to 10 thousand dollars for a small vessel. This provision appears to be a bureaucratic nightmare for the small fishing vessel fleet.

Second, the part that deals with substantial alterations is not workable in its present form in my opinion. The measurements the Coast Guard has proposed to mean that substantial alterations have taken place, are not measurements that are readily available for most fishing vessels. They are as follows.

28.501

(a) Except as provided in paragraph (b) of this section, a vessel that is substantially altered, including the cumulative effects of all alterations, need not comply with the remainder of this subpart, provided that it has stability instructions which comply with 28.530 (c) through (e).

(b) A vessel that is substantially altered in a manner which adversely affects its stability, including the cumulative effects of all alterations, need not comply with the remainder of this subpart, provided the stability instructions required by paragraph (a) of this section are based on loading conditions or operating restrictions, or both, which compensate for the adverse effects of the alterations.

(c) The following changes to a vessel's lightweight characteristics are considered to adversely affect vessel stability:

(1) An increase in the vertical center of gravity at lightweight by more than 2 inches (51 mm) compared to the original lightweight value.

(2) An increase or decrease of lightweight displacement by more than 3 percent of the original lightweight displacement.

(3) A shift of the longitudinal center of gravity of more than 1 percent of the vessel's length.

(d) In determining whether or not a vessel's stability has been adversely affected, a qualified individual must, at a minimum, consider the net effects on stability of any:

(1) Reduction of the downflooding angle;

(2) Increase in the maximum heeling moment caused by fishing gear or weight lifted over the side due to changes in lifting arrangement or capacity;

- (3) Reduction in freeing port area;
- (4) Increase in free surface effects due to water on deck associated with any increase in length or height of bulwarks;
- (5) Increase in projected wind area;
- (6) Decrease in the angle of maximum righting arm;
- (7) Decrease in the area under the righting arm curve; and
- (8) Increase in the surface area on which ice can reasonably be expected to accumulate.

It would also apply to vessels that had been substantially altered on or after September 15, 1991, which goes back a long way. These rules would require a stability test before the work was done and a test after the work was done.

The net effect of this rule would be one of two things it seems to me. First, many fishermen would not make any changes to the vessel no matter what, even if it would improve the safety of the vessel and crew. Second, many fishermen would ignore the whole thing and hope they did not get caught. It seems to me that we need a rule that would encourage fishermen to improve their vessel without being subject to the full weight of the regulations. The part that says "alterations to the fishing or processing equipment for the propose of catching, landing or processing fish in a manner different than has previously been accomplished on the vessel" appears to me to bring the full weight of the regulations to bear if anything is done to the vessel.

I believe the alternate simplified stability test for small vessels is utterly worthless for small fishing vessels.

I understand that the Coast Guard has received almost 800 comments on this Supplemental Notice of Proposed Rulemaking. It will be interesting to see what they come up with.

The Coast Guard sent a licensing plan to Congress which the Commercial Fishing Industry Vessel Advisory Committee did not agree with. The Committee and the Coast Guard formed a working group to see if they could work out the differences and reach consensus. The working group developed a joint paper that was sent to the full Committee for review and received approval at the December 1992 meeting of the Committee.

The plan would leave the option of the traditional licensing process as one avenue. Additionally, the Coast Guard will approve and authorize training organizations and third parties to examine and certify individuals as meeting the required professional knowledge and skill levels for a license. Applicants would need to produce a certificate of completion from an approved course and satisfy all other eligibility requirements related "age, character, habits of life, experience, professional qualifications, and physical fitness" as well as, citizenship, recency of service, and English language ability.

There would be two new licenses: Master of fishing vessels of less than 79 feet, and Master of fishing vessels of less than 200 hundred gross tons. The service requirements will be, respectively, one year of sea service, including at least 6 months on deck of commercial fishing vessels; and two years of sea service, including at least 12 months on deck of commercial fishing vessels, with at least 6 months on commercial fishing vessels over 79 feet.

Applications and associated paperwork will be processed through the mail. Third party organizations will be encouraged to assist the students in organizing their applications prior to mailing to the Coast Guard for evaluation and license issuance.

Selected eligibility requirements will be grandfathered to fishing vessel operators who show a specific amount of experience on fishing vessels prior to the implementation date of the Plan.

One remaining issue: the Committee recommended the threshold for requiring a licensed Master be those fishing vessels of at least 36 feet in length or greater, in lieu of federally documented fishing vessels only.

I have also received the comment from fishermen, that the Master of a fishing vessel under 79 feet should not have to have time on deck of a vessel over 79 feet to get a license for vessels of less than 200 hundred tons.

The Committee had considered inspection when the study from the Marine Board was published, and came to the conclusion that self inspection was a good way to start. The Coast Guard came up with quite a different plan. The Committee went through the Coast Guard plan for inspection at its last meeting, held in May 13 & 14, 1993 here in Washington D.C. The Coast Guard plan for inspection it a three tier plan, with self inspection of vessels under 50 feet, third party inspection for vessels up to 79 feet, and Coast Guard inspection of vessels over 79 feet. The Coast Guard also

wants vessels 79 feet and up to have load lines and new vessels built and maintained in class. The Committee, which has changed in personal quite a bit since the Marine Board study, once again came to the same conclusion. There was lengthy discussion of the issue in May, 1993 meeting. The Committee recommends that the Coast Guard go with self inspection of commercial fishing vessels, with some hull and machinery requirements in a NVIC.

There is one issue that deals with the Oil Pollution Act of 1990. It has to do with the fuel transfer plans that are required for fishing vessels with over 10,000 gallons of petroleum products in total. The supply vessels were excluded from this provision of the OPA, I would like to have fishing vessels treated the same way.

Thank you Mr. Chairman, I would be glad to try to answer any questions.

Joe Easley
P.O. Box 569
Astoria, OR 97103
(503) 325-3384

July 29, 1993

The Honorable W.J. "Billy" Tauzin	The Honorable Tom Manton
Chairman	Chairman
Subcommittee on Coast Guard	Subcommittee on Fisheries
and Navigation	Management
U.S. House of Representatives	
Room 1334, LHOB	
Washington D.C. 20515-6230	

Dear Mr. Tauzin:

Dear Mr. Manton:

This is in reply to your joint letter signed by both of you. Dated June 30, 1993 and received by me July 28, 1993. Representative Tauzin asked me three questions which I will answer first. There were also eight questions for the Panel which I will answer next.

Question 1. The Advisory Committee approved a motion to change the inspection plan to a two tiered program where vessels under 79 feet will be self-inspected and vessels over 79 feet will be inspected by a third party. Why was this change recommended?

Answer. The Advisory Committee approved a motion on inspection on May 14, 1993 as follows. Motion: Send the original recommendation of the Committee for these vessels. Self examination with additional requirements for hull and machinery for vessels with 16 or more persons on board. Motion carried, 11 to 4. This motion dealt with vessels over 79 feet, the Advisory Committee has gone on record as endorsing self inspection for all fishing vessels.

Question 2. Has the Advisory Committee addressed the problems with administering tests to fishermen such as reading and understanding English?

Answer. The Advisory Committee has discussed this issue in the past. A majority of the Committee thought that anyone license should be able to converse in English on a radio. I don't believe they cared if they could read English or not. The Coast Guard told us that test could be given orally and not have to be written. The tests were given orally to many of the towboat people when they were required to be licensed.

Question 3. From your personal views as a fisherman, do you believe that all these legislative proposals and regulations are needed? Do you believe that there is better way to directly reduce casualties and accidents, such as education and training programs encouraged by the industry and insurance companies?

Answer. Education is the answer in my opinion. The question is how do you get everyone who needs it, to get it. Without education the casualties will not go down in the long run. Most insurance companies will not get involved in these kind of

1) Do you feel safety will be enhance if the proposed requirements are implemented?

Answer. I believe the proposed requirements are more than is needed to enhance safety. The inspection proposal by the Coast Guard is much more than is needed in my opinion. Self inspection with a check list will have a great effect in the education department of what the vessel needs to be a safe vessel. The license proposal goes farther than I would choose to go starting out any way. I would rather go for something that requires training in rules of the road and simple stability, with a certificate of competency issued by the training establishment. The power could be given to revoke or suspend the certificate to the Coast Guard.

2) Will insurance rates be affected by these safety programs?

Answer. I certainly hope so. In the end however, the only thing that effects insurance rates is for the causality rate to go down.

3) Do you have any suggestions to improve safety in the fishing industry as a whole?

Answer. The only thing that will improve safety in the fishing industry as a whole is education. People have to think of safety all the time as part of there makeup for it to be effective.

4) Mr. Adler referred to his belief that pleasure boat operators are in need of safety training more so than fishing vessel operators. What problems do fishermen experience related to pleasure boaters?

Answer. The biggest problem with pleasure boaters for fishermen, is a total lack on knowledge about the rules of the road. I think that safety training would have a good result with pleasure boaters.

5) Do you agree with the Coast Guard inspection proposal? Would it increase safety and therefore decrease insurance rates?

Answer. I do not agree with the Coast Guard inspection proposal. It would probably increase safety but at a much greater cost then needs to be put forth. Any thing that leads to a decrease in claims would led to a decrease in insurance rates.

6) Are the insurance rates for individual quota fisheries, such as the surf clam fishery, lower than those fishery activities which you referred to as Olympic style fisheries?

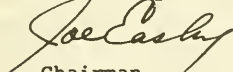
Answer. I do not have any way to answer the question with any certainty. My experience with insurance is that they set their rates based on the overall claims they have in a area for that type of vessel.

7) What do you think can be done to improve safety in the fishing industry?

Answer. Training over a long period of time. There are no quick fixes.

fishing quotas is a management tool that can be used in all fisheries. In some fisheries, it appears to me when I run the numbers out for enforcement and management, that the fishery is not able to support the cost and we know that government can not afford to be spending more.

Joe Easley

A handwritten signature in cursive script, appearing to read "Joe Easley".

Chairman,
CFIVAC

WRITTEN TESTIMONY
OF

ALAN DUJENSKI

MARINE SAFETY SPECIALIST
FOR
THE INSURANCE BROKERAGE FIRM
OF
PETTY-MORRY COMPANY, SEATTLE, WASHINGTON
AND FORMER HEAD OF THE COMMERCIAL FISHING VESSEL SAFETY
PROGRAM FOR THE THIRTEENTH COAST GUARD DISTRICT

SUBMITTED
TO
THE COMMITTEE ON MERCHANT MARINE AND FISHERIES
SUBCOMMITTEE ON COAST GUARD, NAVIGATION,
AND FISHERIES MANAGEMENT
ON 15 JUNE 1993

REGARDING
THE ISSUES OF THE COAST GUARD'S SUPPLEMENTAL NOTICE OF
PROPOSED RULEMAKING ON THE VESSEL STABILITY AND OTHER
REQUIREMENTS PUBLISHED OCTOBER 27, 1992, AND THE RECENT
LICENSING AND INSPECTION STUDIES SUBMITTED BY THE
DEPARTMENT OF TRANSPORTATION TO CONGRESS

WRITTEN TESTIMONY PRESENTED TO THE COMMITTEE ON MERCHANT MARINE AND FISHERIES SUBCOMMITTEE ON COAST GUARD, NAVIGATION, AND FISHERIES MANAGEMENT REGARDING THE ISSUES OF THE COAST GUARD'S SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING ON THE VESSEL STABILITY AND OTHER REQUIREMENTS PUBLISHED OCTOBER 27, 1992, AND THE RECENT LICENSING AND INSPECTION STUDIES SUBMITTED BY THE DEPARTMENT OF TRANSPORTATION TO CONGRESS

INTRODUCTION: I am Alan Dujenski, Marine Safety Specialist for Petty-Morry Company, one of the largest marine insurance brokerage firms in the United States. My job is to provide a service to the company's staff as well as their clients to not only be made aware of regulatory compliance issues and requirements, but also to help foster programs which will promote preservation of life, property, and our environment. Prior to Pettit-Morry, I served twenty years in the Coast Guard, most of which were in Marine Safety. The last five and a half years I was directly involved in the promotion of safety in the commercial fishing industry in the Thirteenth Coast Guard District (Washington, Oregon). During this period of time I conducted over 80 safety seminars and town meetings, providing an outreach to the fishermen and the fishing industry. I believe that working with the industry both from both inside and outside the Coast Guard has given me a balanced perspective of the issues at hand. Prior to preparing the following testimony, I have discussed the issues with scores of people representing all aspects of the industry: fishermen and their families, vessel owners, operators of training facilities, marine surveyors, naval architects, and insurance representatives.

ISSUES TO BE ADDRESSED: In this testimony I intend to present sufficient information which will clearly show that the safety regulations spawned out of the Commercial Fishing Industry Vessel Safety Act of 1988, both existing and proposed, do not address the problems directly related to the high loss of property and lives in this industry. Additionally, it is my intent to show that the regulators of this industry, both through their actions and inactions, have contributed directly to the losses and lack of compliance with good safety practices. If these regulators are allowed to continue on their present course, they will needlessly destroy a very unique part of our Americana. But most importantly, out of the ashes from this testimony, I hope to show that there are some positive ways we can economically and effectively promote safety within this industry.

The following is a discussion of the issues:

LICENSING STUDY: The study presented to Congress by the Department of Transportation is generally good. Licensing does have benefits of establishing some minimum level of expertise for vessel operators. Hopefully this will help minimize personnel error related casualties which seems to account for the majority of the incidents in this industry. I want to inject a word of caution here. The present Coast Guard licensing program is no panacea. It has degenerated over the years to where an individual can obtain a license with minimum at-sea experience, and if he or she is good at taking tests, can enroll in a course that teaches them how to answer questions on the Coast Guard exams. By virtue of "head knowledge" alone many people getting licenses today that have no seamanship capability. A vital subject like stability, is barely understood by many of the licensed personnel operating a variety of vessels

today. No system is perfect and I wanted to point that out. Issuing licenses alone will not reduce all the personnel related casualties, but it will make a significant contribution minimizing them. Continued training and education are key items which goes along with licensing; this will be discussed in depth later on in this testimony. If you should elect to require licensing of commercial fishing vessel operators, I urge you to stipulate to the Coast Guard that the plan can not be implemented without first laying out the guidelines and ensuring the resources are available. The Coast Guard has an embarrassing record for developing regulations for the fishing industry, and then trying to figure out how to implement them after they become effective. This is one of the biggest complaints from the industry. The EPIRB regulations are a living testimony to this position (this too will be discussed in detail later in the testimony). A point that must be remembered when developing a licensing plan is that characteristics of each of the fisheries make them unique. Although, general safety and navigation items are common, operational characteristics of seine vessels, trollers, trawlers, gillnetters, and crabbers are all different. It is my recommendation that licenses be fishery-specific.

INSPECTION STUDY: To put it bluntly, the inspection plan submitted to Congress is based upon erroneous data, would prove to be costly to implement, and would have minimal affect for reducing casualties. Prior to 1986 it is estimated that only about 20-30 percent of the casualties in the the fishing industry were reported. This was primarily a result of lack of knowledge on the fisherman's part that such reports had to be submitted. In 1986, the Voluntary Commercial Fishing Vessel Safety Program commenced. This alerted the industry to this reporting requirement, however, since there was limited outreach by the Coast Guard, it was primarily only the larger companies that became aware of casualty report requirement and started to be more diligent in submitting the information. When you review the Coast Guard's data, you will see that commencing about 1986, larger vessels started to experience a significant increase in casualties. This fact coupled with smaller number of vessels in the "large vessel" category, gives larger vessels a higher accident rate. Yet, when you look at the casualty data overall, there are more deaths that occur within the small boat category, but the high number of vessels give this category a low loss of life rate. For your information, I use a length of 79 feet to differentiate between large and small vessels. It appears that the Coast Guard was influenced by this data in concluding larger vessels require a more rigorous inspection and letting vessels under 50 feet in length to self-inspect.

The two groups solicited to conduct the studies used by the Coast Guard were not qualified to to conduct the studies. Both WPI and the National Academy of Sciences were unfamiliar with the industry and both were East coast institutions. The largest variety of vessels and the most dangerous fisheries are in the Pacific Northwest. The lack of understanding of our area explains the incompleteness of the reports. Although the National Academy of Sciences did utilize a group in the Pacific Northwest to prepare a sub-report, they selectively culled what information they wanted to include in the final analysis, which did not accurately depict the overall picture in this area.

Lets now look at the proposal formulated by the Coast Guard which is basically as follows:

VESSEL LENGTH

79' and longer
 50-79'
 Less than 50'

REQUIREMENT

Coast Guard Inspected
 Third Party Inspection
 Self Inspected

For VESSELS LESS THAN 50' the self-inspection program will not and can not work. First, the regulations that apply to these vessels do not address the causes of casualties in this size of vessel. Falling overboard is one of the major problems for these smaller vessels followed by flooding, and engines failing and then these boats broach in heavy seas (turn sideways to the seas) and then capsize, and lastly, just

poor condition of the vessel's structure. Self-inspection to the present or proposed regulations would not have addressed the causes of these problems. An additional item of concern is that who will train the industry how to inspect these items. At present there are very few Coast Guard personnel trained properly to be able to inspect these vessels. Additionally, the significant amount of ambiguity in the regulations opens them to a wide variety of interpretations. Within the Coast Guard organization, personnel in the same district can't agree on interpretations and the problem is even greater between Coast Guard Districts. Can you imagine the wide variations of interpretations that will exist within the industry? The Coast Guard, unfortunately does a lot of regulating through standard policy guidelines such as Navigation, Vessel, and Inspection Circulars, more commonly called NVICs. The purpose of these were initially to provide interpretations to the regulations, but in recent years have been a convenient way to generate regulations without going through the regulatory process. There is no general announcement of these NVICs. Unless a member from industry had heard about it from someone else in industry, there is a good likelihood that he would never have found out. Also, ordering these NVICs through the distribution system at the Superintendent of Documents often takes weeks if not months for delivery. In addition the NVICs, there is the Marine Safety Manual. This was generated to take and incorporate the multitude of policy letters and publish them so both and industry and Coast Guard were conducting business from the same "policies and regulations". This publication is so badly outdated, there is always confusion, even within the Coast Guard of what is or is not the "current" policy. Because the Manual is not being maintained, the different offices in the Coast Guard maintain their own set of "policy letters" which some offices maintain an index; these policy letters are not generally publicized. And in addition to all of this, some offices of the Coast Guard will send out letters to a specific company or individual in which policy is established but this is never circulated nor indexed. When the poor vessel owner or operator finds out about all these "policies" is after some attorney has ferreted this information out and is confronting him in a court of law. Policies such as exist in the NVICs have been held in court to carry the same weight as regulations. When you have regulations that are not clear, vessel owners untrained in the inspection of safety equipment, conflicting responses to questions from the various Coast Guard offices, and regulatory policy hidden from the general public, I can't see how you can expect the self-inspection program to succeed.

For VESSELS 50-79' The Coast Guard proposes inspection by "third party" groups. This would include Classification Societies such as the American Bureau of Shipping and Det Norske Veritas as well as certain marine surveyors accepted by the Coast Guard. You now run into similar problems as with the small vessel owner. Although these surveyors have better knowledge of vessel structural and mechanical details, at present the vessel material condition is not covered by the regulations. However, the same issue of regulatory interpretations will be experienced by this group. As an aside, at a maritime luncheon I recently got to witness an excellent example of the frustration already that exists. There was a panel consisting of Coast Guard personnel and some classification surveyors established to address questions from the industry to the fishing vessel safety program. Someone from the audience complained about

the ambiguity of the regulations. To the surprise of the group, some of the panel members (surveyors) soon joined in focusing their frustration also with the regulations. For your information, the Coast Guard has in place a program to provide voluntary examination of fishing vessels upon which satisfactory completion of, a decal will be issued to the vessel. This program provides for third party surveyors from accepted organizations to be able to conduct safety surveys (for a fee to the vessel owner) and issue decals also. The marine surveyors in the Pacific Northwest are not participating in the issuance of decals because they are concerned that the the ambiguity of the regulations will open them to lawsuits. For your information, most marine surveyors do not carry any form of "errors and omissions" insurance. Some of the more qualified surveyors have already brought to my attention on several occasions they have boarded vessels just examined by Coast Guard (and which were issued decals by the Coast Guard) that had numerous discrepancies. This disparity creates hostility towards the surveyor which can ruin his reputation on the waterfront. And for what reason? For doing his job. Where does the Coast Guard expect to get sufficient qualified marine surveyors, especially in remote areas in Alaska? Without some major efforts to clarify the regulations, eliminate the hidden policies, and provide some training for the surveyors, the third party inspection program can not and will not work!

For VESSELS 79' AND OVER the Coast Guard proposes to require these vessels to be Coast Guard inspected. Additionally, they recommend that new and existing vessels be load lined and meet some higher standard than the existing safety regulations such as classification design and construction requirements. For new vessels, construction to classification standards generally will not pose any real problem other than higher building costs. But with the fisheries in such a state of flux, it will probably have owners using the older vessels longer than they should be; trying to get a few more seasons from a marginal vessel. On the other hand, the Coast Guard wants to require some "additional standards" for existing vessels 79 feet and over. What is scary is that the Coast Guard has demonstrated clearly its inability to relate to the fishing industry and to generate reasonable regulatory requirements. Although I intend to discuss the regulations in greater detail later, I wish to note that the "additional requirements" presented for new construction or vessels undergoing a major conversion (46 CFR 28 Subpart D) in many instances go beyond requirements for existing tank and freight vessels. A closer review of these regulations show that they were randomly pulled from regulations for other vessels such as small passenger vessels and in some cases were put in because the person who was in charge of this section just thought they were good ideas. The electrical requirements do not have continuity because they were extracted only in part from another source. The requirements for hydraulic systems go beyond the requirement for present inspected vessels and impose impractical limitation on hoses. In discussions prior to the finalization of these regulations, I had asked what sort of casualty data these requirements were being based; the answer was NONE. Lets discuss the ability of the Coast Guard to supply the resources to inspect these vessels. At present, the Coast Guard has about 350 trained inspectors for a fleet of about 12,500 vessels now required to be inspected. These inspectors typically are in training for only about eighteen months and then spend less than two to three years actually inspecting vessels. The rest of the careers most of them spend jockeying from one administrative job to another trying to maintain their promotability. There is very little time that these people get making them proficient. With vessels that have been inspected for years such as tankers and freight vessels and small passenger vessels that section of the industry has been in business for a long time and know the requirements. The fishing industry is a different matter. A good example to reflect upon is the offshore-drilling industry which came under regulation in the late 1970s. Special schools were established to train the inspectors; I have yet to hear about any special schools being

planned for in this industry. This industry has the most diverse collection of types of vessels in the world and special training would and should be required. The number of inspectors projected appears to be grossly underestimated by up to up to 4 or 5 times. The larger fishing vessels typically are available only a few months a year and are in remote areas, therefore there will be a concentration of inspections in a shorter period of time. Also, the times estimated for conducting an inspection on these vessels is more appropriate after the vessels have been brought into compliance. The learning curve for both the inspectors and for the industry during the first three or four years will require probably five times the estimated manhours. My concern is that the industry will pay twice for this "service" through higher taxes and for the user fee charged for the inspector. Also, it appears that the user fee the Coast Guard will be charging is about twice the rate of most marine surveyors. Now consider that Seattle is a training port for marine inspectors. Besides being charged rates double that of the marine surveyors, the inspections will take longer with trainees tagging along with the Coast Guard inspector. The bottom line is that the Coast Guard grossly underestimated the problem of inspection of fishing vessels as well as the cost to the industry, and overestimated their ability to perform the task of inspecting these vessels!

PROBLEMS WITH EXISTING SAFETY REGULATIONS: The existing regulations were ill-conceived and in most cases will do little or nothing to prevent the loss of life. Besides being based upon bad casualty data, the regulations were contrived by personnel with little or no sea-going experience and no understanding of the fishing industry! If it was not for the tragic loss of the ALEUTIAN ENTERPRISE, the Coast Guard today would have a distorted perspective of the vessels in this industry. Before the Marine Board could investigate the loss of this vessel, they spent many days bringing in industry members to educate them on what they were investigating. Up to this point, the Coast Guard considered these "uninspected vessels" and because of the many mandates placed on them by Congress taxing their resources, elected not to get involved with this industry (despite the heavy loss of life and property) because they were not provided the proper resources by Congress. During the development of the regulations and even in the final review, myself (as the Fishing Vessel Safety Coordinator for the Thirteenth Coast Guard District) and numerous other factions from the industry tried repeatedly to point out the problems, but we as a whole were ignored. Based upon my review of casualties over a 10 year period, I concluded the majority of casualties were caused by LACK OF STABILITY, LACK OF WATERTIGHT INTEGRITY, LACK OF ADEQUATE DEWATERING CAPABILITY, LACK OF EDUCATION (general seamanship, good marine practices, and care and use of safety equipment), and FATIGUE. The present regulations do not address any of these for vessels under 79', and only partially for those 79' and greater.

The existing regulations have a lot of ambiguity to them. This is the major complaint from both Coast Guard field personnel and industry alike. A few examples are as follows. The regulations require vessels with large machinery spaces to have more than one bilge suction...what is LARGE? First aid kits are required to be suitable for their vessel...What constitutes suitable? Ring buoys are required to have line attached of certain length, but what type of line? Significant requirements become effective if a vessel undergoes a major conversion...the definition of major conversion says a vessel that is substantially altered...what constitutes substantially altered? These are only a few examples. Some seem quite trite, but when you keep changing line on your ring buoys because one Coast Guard person wants a particular type, color or size, or each Coast Guard office has their own opinion when you ask them of what constitutes "a suitable first aid kit". There is no capacity standard for bilge pumps unless it is a portable pump, then it has to be capable of dewatering the compartments at a "rate of 2 inches per minute"; how do you determine this when pumping capacities

TESTIMONY OF ALAN DUJENSKI
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON MERCHANT MARINE AND FISHERIES
15 JUNE 1993

are in gallons per hour? What is amazing, your vessel can be in marginal condition, but if the safety equipment is on board you can get a safety decal. It is sort of like the Coast Guard saying, we know your vessel is going to sink, but at least you can save yourself. These regulations have helped perpetuate the concept this safety equipment is some sort of "St. Christopher medal", as long as you have it on board you will be safe. Survival suits are good, but if you may not have time to put it on. Also in freezing and subfreezing temperatures, some suits can not be put on because they are frozen. Liferrafts can't always be put in a location on the vessel, especially smaller ones, that will ensure they will float free of wires and rigging. Plus, most of the regulatory bureaucrats have not seen rafts function in the severe environment. If a raft is deployed in heavy weather, the raft will be blown away like a pin-wheel across the water. Several fishermen have shared with me the cases where rafts were accidentally deployed by heavy seas and they chased them for hours before giving up because the rafts was traveling faster than the vessel could go; how could a person in the water be expected to get to a raft? What about Coast Guard approved chemical lights for survival suits that don't function effectively in cold waters, yet is still allowed by the Coast Guard for use in cold regions? What about the EPIRB that was touted by the Coast Guard as a great lifesaving device. The industry initially paid about \$2000 each for these and there is an alarming number of failures of these devices and there is no alert put out by the Coast Guard regarding this problem. Do you realize that a high percentage of loss of life on small fishing vessels is a result of them falling overboard? The \$10,000 of safety equipment required on these small vessels does these people no good at all. There are requirements for publications to be on board the vessels, yet there are some people that can't read. They are required to get nautical charts, yet these charts when purchased can be as much as 3 years out of date requiring the fisherman to have to go back through three years of weekly Coast Guard's Notice To Mariner newsletters (if they can locate a source of them). What about use of existing liferafts? The regulations say you can continue to use them as long as they are maintained in good and serviceable condition, however, the Coast Guard through their policy and isolated letters in industry effectively made these rafts "like Coast Guard approved rafts" by requiring these rafts to be serviced at Coast Guard approved servicing facilities, serviced to Coast Guard approved service manuals and meet Coast Guard special inflation test. The Coast Guard exempted personnel with a 100 ton vessel license from having to be certified to conduct on board training and drills despite the numerous comments that a license does not ensure a person knows how to conduct training. This further watered down the effectiveness of the regulations, especially since training and education are the key to the reduction of loss of life. Within the past year, the industry has experienced several lives lost in the fishing industry because the vessel operator did not know how to maintain or use his safety equipment.

PROPOSED REGULATIONS: The Supplemental Notice to Proposed Rulemaking published in the Federal Register on October 27, 1992 constitute the worst regulatory package I have ever encountered in my twenty years associated with the maritime industry. I am enclosing the contents of my letter submitted to the Coast Guard addressing the issues in detail:

27 February 1993

Executive Secretary
Marine Safety Council (G-LRA-2/3406)
(CGD 88-079a)
U.S. Coast Guard Headquarters
2100 Second Street SW

Washington, D.C. 20593-0001

I would like to take this opportunity to share my comments with you regarding the proposed fishing industry vessel safety regulations. First, I wish to establish my credentials and with what authority I make these comments. I have recently retired from the Coast Guard with over 20 years of service; most of it being in marine safety. My last tour in the Coast Guard was in the Thirteenth Coast Guard District where for four and half years I served as the F/V Safety Coordinator. I have since been employed by one of the leading insurance brokerage firms in the country: Pettit-Morrey Company as a Marine Safety Specialist serving both their staff and their clients. My Coast Guard career alone does not qualify me for the following comments, but rather the education I received walking and talking with all aspects of this industry. And it is this experience and observations by which I present these comments and not just as Alan Dujenski or just representing Pettit-Morrey's clients.

GENERAL COMMENTS

1. These regulations as a whole represent a total misunderstanding by the Coast Guard of the industry and the true safety issues.

a. Take stability for instance. Based upon the studies of the casualties in the Pacific Northwest for the past ten years I have not been able to find even one case where a vessel which had a stability analysis using current industry standards, and the vessel was within the limits of that analysis, was lost because of lack of stability. Even review of the infamous "A" vessels casualties reveals that they were not built and operated as originally designed. In many cases it appears investigations by inexperienced personnel have failed to recognize flooding being the primary cause and instability the resultant. What is totally amazing is that the Coast Guard has yet to address adequate dewatering for these vessels, which probably accounted for close to half the casualties. The disconnect that I mentioned that exists between Coast Guard and industry is exemplified here. When the Coast Guard talks about bilge pumps, it basically is addressing normal leakage from glands and packing and condensation. The 5-25 gallons per minute pump is fine for that. But John Q. Public thinks more in line with "dewatering", where you are talking about higher volumes (especially from non-watertight deck openings). A requirement for adequate size pumps would have done more to prevent casualties than stability analysis, especially on many of the older and proven designs that won't meet the new criterion.

b. The major fear and probably one of the leading causes of loss of life with the smaller vessels is falling overboard. Your regulations, existing and proposed, and the \$10,000 of new safety equipment that has been amassed on each of these vessels have failed to address this fundamental problem.

c. The Coast Guard's at-sea boarding program has created a fear in the industry to the point they are generally afraid to appeal citations and find it difficult even to take advantage of the 1-800 number to comment on the regulations. There have been several instances where regardless of the display the SAFETY DECAL, they have undergone lengthy safety checks; Items accepted in one district is not always acceptable in

another. A new fear and general distrust of the Coast Guard is growing. This is an area that needs some attention.

d. The subject proposed regulations are extremely confusing for myself even with my background, the local naval architects, and THEY ARE TOTALLY CONFUSING TO THE FISHERMAN. I spent over 40 hours trying to flow-chart the stability regulations alone and I still find errors and questions. When I submitted the chart to G-MVI-3 for their comment, their interpretation even had some errors. When the drafters are having some difficulty then maybe that should be a sign that further review is necessary.

e. The Coast Guard has been aware of the problems for some time now with certain Personal Flotation Device (PFD) lights not performing well in cold waters. The current regulations require compliance with 161.012 which is a standard for lights rated at 59 degrees F WHICH IS NOT ACCEPTABLE FOR COLD WATERS reaching near 30 degrees. The standard 161.112 which is a SOLAS standard, rates the lights for cold waters. I feel strongly the Coast Guard has a moral obligation to make this change.

f. These are not stand-alone regulations. The reviewers must first combine them with existing regulations before they comment. The average person in the industry does not have weeks to perform this task before they can start to review them. Also to fully understand the regulations, especially the stability portion, one needs to have the previous Preambles to the previously proposed regulations.

The following comments are applicable to the specific regulatory topics:

STABILITY

1. **VESSELS LESS THAN 50 FEET:** It first appears that these vessels are being given some reprieve from the stability requirements. Further investigation shows that one of the requirements for these vessels is stability instructions. Where does the information for this instruction come from? Since the Coast Guard bad-mouthed the roll test criterion in

the preamble, the naval architect has no choice (especially because of liabilities) but to use the standards contained in these regulations and conduct a full stability analysis and evaluation. So in essence, the regulations have not only required a regular stability analysis that pertains to vessels over 79', but also has added the requirement for bulkheads.

a. It is not clear what is the intent of 28.525 referencing 28.250 and 28.255.

b. It is extremely expensive, if not near impossible and impractical to retrofit older wooden boats with bulkheads. The bulkhead requirement should be required for new vessels but optional for existing boats.

2. **SIMPLIFIED STABILITY TEST:** There appears to be no scientific basis upon which the Coast Guard selected this criterion other than IT

SEEMED LIKE A GOOD IDEA. Local naval architects have yet to find a vessel which passes the proposed stability standards that would pass this test. This should be removed.

3. **SUBMERGENCE TEST:** This test, according to 33 CFR, is for a manufacturer of recreational boats **LESS THAN 20 FEET**, where he is making several hundred or thousand of them and this is how he tests the prototype. This test has no applicability in the commercial industry and

should be removed. To be quite frank, it should be an insult to yourselves for even having considered such a ridiculous standard.

4. In G-MVI-3's revision of my flow chart for the stability regulations the **LESS THAN 50'** requirements are not an option; nor are they optional for the **TENDERS**.

5. The regulations fail to recognize protected and partially protected waters such as bays and rivers.

6. The regulations have no lower limit, and even the small 18-22 dory fleet falls prey to them where stability has never been a problem in their long history.

7. Rather than repeat the comments, I want to echo my complete concurrence with Mr. Dave Green's comments from Jensen Maritime.

8. The Letter of Attestation is a meaningless requirement which is unnecessary and does not promote safety. To get a Coast Guard license today, you don't have to know stability, all you have to do is memorize a few questions and answers. You are placing a requirement on this industry that goes beyond the inspected vessel fleet and in general will only serve the lawyers. You require the owner to attest to the fact that the stability test and calculations were performed by a "qualified

individual". What is a qualified individual? How do you expect the owner to judge who is qualified and who isn't where there are no standards?

SURVIVAL CRAFT

1. The regulations fail to address acceptability for devices such as **AVON** and **ZODIAC** style boats. These should be considered equivalent to inflatable buoyant apparatus

2. The buoyant apparatus provides no substantial increase in safety over the life-ring for 1-3 man crews. For smaller crews and smaller vessels the **KANO RING** appears to be the only alternative. This is just an oversized life ring which like the life ring does not get the fisherman out of the water. Due to the cold temperatures, hypothermia will affect them equally. Note also that survival craft inside 20 miles is not required to be float-free, which means that if you are expecting this to be available if the vessel suddenly capsizes, it won't be. This requirement should be scrapped.

3. In 28.120(g), the referenced positive flotation standard in 33 CFR 183 is designed only for vessels less than 20 feet, yet you are applying it to vessels up to 36 feet as an alternative? It appears that this is a regulation which can't be met and only serves to give the false impression to Congress and the public that there are "alternatives".

ALEUTIAN TRADE ACT VESSELS

1. These requirements exceed requirements for inspected vessels. These standards appear to be arbitrary. I am not aware of any significant casualties with this class of vessels in the past ten years. The requirements for firefighting systems to be approved and the electrical systems to comply with Subchapter J will place an unwarranted and costly requirement on them.

2. The definition of ALEUTIAN TRADE as written includes the whole western coast of Alaska and not just the Aleutian Chain; is this the intent?

3. I want to note that I concur with Mr. Dave Green's comments regarding the issue.

4. It is not clear why the proposed regulations on one hand impose standards for equipment and systems which exceed the requirements for the inspected fleet of vessels, yet in 28.720 exempt them from annual survey requirements?

TRAINING QUALIFICATIONS

1. What is disturbing is that based upon several telephone calls, the version for qualifications contained in the regulations is not the current version the Coast Guard and industry had worked out. In essence the

plan being considered is not what the public has the opportunity to comment on. I find this contrary to the purpose of publishing regulations and violates the administrative procedures act.

2. The "standards" for qualifications do not seem equitable. When you diagram out the regulations you have three (3) avenues: 100 ton license, main criterion, and special exemption. I contend, as does most of the industry, the 100 ton license does not give the individual the necessary qualifications to be able to conduct the safety classes. The special exemption leaves it wide open to the various local Coast Guard licensing offices to make arbitrary decisions. For your main list of qualifications I have the following comments:

a. Why limit the experience to documented vessel sea experience only? I have met several individuals with undocumented experience mostly that would make excellent instructors. A high percentage of the fleet of fishing vessels are state numbered boats.

b. Another criterion is never having been denied a license. What if it was denied because of color blindness or other physical limitations? You now eliminate an otherwise qualified person.

3. There is nothing to note that the various ACME zones will accept other ACME accepted individuals. If you don't think this is a problem, the

Alaskan Coast Guard Region has not accepted the SAFETY DECALS issued out of Seattle and Oregon.

4. It is confusing reading these proposed requirements if the regulations are talking about individuals who actually conduct the drills and training on board the vessels or the persons who qualify the individuals.

EXEMPTION LETTER

1. This regulation does not address reciprocity between Coast Guard Districts. Because of the wide degree of variance that exists today along the West Coast and Alaska I see problems with one district not honoring another exemption.

2. It is confusing why "class" exemptions are limited and individual exemptions are not. An example to consider is that if the Coast Guard in Oregon wanted to exempt a requirement for the 400 dory boats it could only be for a short time, however they could grant for an unlimited time, exemptions to the 400 boats individually.

TERMINATIONS

1. This authority should be for the District Commander and not the Boarding Officer. This regulation seems to be a carryover from the recreational boats where regulations are simpler and the termination does not affect livelihoods. The fishing vessel regulations are complex for the boarding officers to have a full grasp of their interpretations. With shorter fishing seasons, an unwarranted termination could be extremely costly to the vessel operator.

RECOMMENDATIONS

1. Based upon all the confusion with the stability regulations, lack of substantiation for buoyant apparatus or Aleutian Trade Act requirements, and the misrepresentation of the qualification standards THESE PROPOSED SUPPLEMENTAL REGULATIONS NEED TO BE RETRACTED.

2. Hire naval architects from the fishing industry to redraft the stability section.

3. Apply reflagging requirements to the Aleutian Trade Act Vessels and or consider the acceptance of classification of these vessels.

4. NEW REGULATION: For cold waters PFD lights need to comply with 161.112.

CLOSING COMMENTS

In closing, I wish to emphasize that the current regulations have not been given a chance to make an effect on the industry. There has been a lot

TESTIMONY OF ALAN DUJENSKI
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON MERCHANT MARINE AND FISHERIES
15 JUNE 1993

PAGE 12

of confusion ever since the poor management of the EPIRB regulations. It is my understanding that the Coast Guard has spent over \$15 million dollars last year to train its people in **TOTAL QUALITY MANAGEMENT**. This basically is teaching its people to **LISTEN** to its customers; I pray those tax dollars were not spent in vein. From the insurance perspective and from a background dedicated to over twenty years of safety I would welcome **MEANINGFUL** safety requirements; unfortunately these proposed regulations have missed their mark.

It appears that some well intentioned ideas to promote safety have gone overboard. Through these regulations and your good intentions you may be putting thousands of people out of work needlessly.

Alan R. Dujenski
Marine Safety Specialist

* * * * *

RULE MAKING PROCESS IS BROKEN: I think it should be clear from the information presented that something is wrong with the way regulations are being drafted and implemented with them being so far off target. It would seem that since the Coast Guard spent over \$12 million dollars on **TOTAL QUALITY MANAGEMENT** training, they would have been able to have better identified the problems and addressed them in a more professional manner. I would like to address two specific cases to better illustrate the problem. First, the proposed regulations for survival suits which appeared in the April 19, 1990 Federal Register indicated that survival suits would be required on Oceans, beyond the boundary line North of 32 degrees N and South of 32 degrees South. In the final rules which were published on August 14, 1991 the requirement has changed to include coastal waters. For Washington State, this made suits mandatory for all the small skiffs and small gillnet boats throughout the Strait of Juan de Fuca and in Puget Sound almost down to Tacoma. Immersion suits are impractical due to the size of these vessels and plus fishermen on these small vessels experience primarily falling over board or capsizing; in both cases the suits would be of little value. The issue here is none of these people had the opportunity to comment on these regulations. In the final rules there were no comments in the Preamble discussing this change, plus there appear to have been no written comments submitted. One should ask how did this become a regulation then? The second example is the infamous EPIRB (Emergency Position Indicating Beacon) regulation. The Coast Guard was advised initially not only by EPIRB manufacturer representatives but also from Coast Guard field personnel that the requirement for the new and expensive 406 EPIRB was not appropriate for the smaller vessels (less than 36'). First, the automatic release for the EPIRB need to be submerged about 15' before it will release. Most of these boats have enough reserve buoyancy not to sink immediately after the capsize, therefore it might not release or could get caught in the vessel after it finally starts to sink. Data was provide to the Coast Guard using there own casualty data base showing that the majority of the vessel losses to these smaller vessels occur within three miles of the coast of Washington and Oregon where there is no requirement for EPIRBS. More specifically, these casualties occur primarily when the vessel is crossing a bar. The other comment made was that for casualties about 20 or so miles off the coast, it will take the Coast Guard about 2-3 hours to get on scene. With the existing 121.5 MHZ EPIRB, survival time Since these smaller vessels capsize abruptly, when they do, and the operator has no time to get his survival suit on. The average time for survival in these cold waters without a survival suit is less

than an hour. The comment was that these become expensive body locators. The Coast Guard ignored the input initially, and then required them on board vessels before the manufacturers could meet the demand. This plus tying the requirement to whether or not the vessel had a galley or berthing threw both the industry and the Coast Guard law enforcement people into a state of confusion and frustration which still exists today. The industry only asked that these smaller vessels be allowed to use the less costly 121.5 MHZ EPIRBs for about five years until the manufactures had a chance to develop a smaller and more cost effective unit for these small vessels. The 406 EPIRB was brand new technology and there was no time to work the "bugs" out of the designs. As a result there have been at least a hundred failures of the units reported in the field due to component failure since most manufactures did not anticipate the units to take the severe vibration and pounding the units are experiencing. All this at the expense of basically a fleet of "mom and pop" operators struggling to clear about \$4,000 to \$5000 a year.

COAST GUARD BOARDING OF VESSELS: The horror stories continue to role in even as I am writing this letter. Although there have been significant changes for the better in the past year, the boarding officers from the Coast Guard Cutters on patrol in the Pacific Northwest still board fishing vessels in nothing short of Gestapo fashion. Within the past several months, there was a boarding conducted on a fishing vessel by twelve Coast Guardsmen armed with "rifles"; the vessel had a crew of only five. There was no intelligence report indicating a problem with this vessel. When queried by the skipper to what was transpiring the response is this was a training boarding. This is only one of dozens of complaints about being used as a training facility for Coast Guard boarding teams. Another complaint is that many times the boarding team will not let the skipper tag along to answer questions and many times they start turning the radio channels and marking down frequencies and when asked what they are doing the skipper is told it is none of their business. When I was holding town meetings as the Fishing Vessel Safety Coordinator in Washington and Oregon, on three occasions I was approached by an elderly couple that related the terror of a boarding where they were mustered on the aft deck of their vessel and held at near gun point. I can see the fear in their eyes to this day. What is equally confusing is that the Coast Guard shore stations have developed a good rapport with the industry and finally started to shed the SMOKIES OF THE SEA image and was just starting to be viewed again as the LIFESAVERS. These shore stations are complaining just as much as the fishermen about the at-sea boardings by the cutters. In addition to their boarding styles, they have disseminated incorrect information concerning requirements and have a high degree of errors in what discrepancies they are citing the operator for. My God, do the rights of citizens end at the dock? Is the storm trooper what Congress intends to patrol the sea? I would like you to ask yourself what would happen if the Coast Guard boarded you and treated you like a criminal? It is my contention that the fishermen are handy vessels to board so the Coast Guard can get their quota and justify their existence. Are they looking for drugs? A close review of the records will probably show you that there have been more Coast Guardsmen found in possession of drugs in the Pacific Northwest than fishermen! I am ashamed and embarrassed for the Coast Guard that they are aware of the problems but continue to allow this to go on.

ADDITIONAL POINTS TO CONSIDER: I strongly believe that the present fisheries management system has contributed more in recent years to the loss of life than any other single factor. With limited seasons many operators are struggling to just make payments and put food on the table for their families. With some of the openings only a few days, and in some cases hours long, they are driven out of desperation to take their vessel out fishing in bad weather. A serious look at the fishery management system needs to be undertaken? Along the same lines, the cut

back in weather service for the vessels has resulted in information being made available AFTER the front has arrived, catching many fishermen off-guard. This service is vital to the mariner, especially, those with smaller vessels.

A few closing comments regarding the Coast Guard. Why is it that they say they are short-handed and don't have money to support a dynamic fishing vessel safety program and yet for example one district has people and money to expend on things like the Portland Rose Festival, Sea Fair, and Combined Federal Campaign. Additionally, where are they getting the large staffs and money to support family advocacy services. Does not the community off this service? It appears that fishing vessel safety is only being paid lip service.

CONCLUSIONS AND RECOMMENDATIONS:

1. The licensing of commercial fishermen will be beneficial in helping to reduce casualties. The program must be formulated before the regulations become effective so to work out any problems ahead of time and ensure minimal confusion.
2. The inspection program is severely flawed and should be discarded. I recommend that no inspection program be considered for at least five years to give the present regulations to get fully implemented and clarified. In the interim, I strongly urge you to consider developing a program to professionally license marine surveyors in this country. At present there are no qualifications to become a marine surveyor, and as a result this profession has acquired a bad reputation. Upon completion of a licensing program, I would recommend requiring annual or biennial inspections on all fishing vessels by third party surveyors (some vessels only operate a few month or weeks a year and may not warrant annual inspections). This would create jobs nationally for about two thousand marine surveyors; in the maritime field these jobs are badly needed. Besides revitalizing the maritime community, it would be a cost savings to the tax payer by not having to pay for more Coast Guard inspectors an also for the fee that the fisherman would have to pay. Actually, this really is a "user fee system" that does not need the government to have to get involved in managing the collecting of fees.
3. There should be a requirement that all persons working on fishing vessels receive some form of training before being employed. This would relieve the skipper of the vessel from having to expend an inordinate amount of time teaching crewmembers the basics and allow him time to concentrate on getting the crew to work as a team during emergencies. This is consistent with IMO recommendations. IT IS EDUCATION, NOT REGULATION THAT WILL ULTIMATELY BRING ABOUT A REDUCTION IN THE LOSS OF LIFE IN THIS INDUSTRY!
4. An industry task force is needed to overhaul the existing and proposed regulations; I think it is clear that the Coast Guard has proven to be incapable of developing meaningful regulations for this industry. Additionally, there should be serious thought to hiring experts from the industry to develop meaningful requirements in such areas as vessel stability.
5. An investigation into the Coast Guard boarding program should be immediately undertaken to address some very serious problems.
6. The fisheries management process needs to be carefully reviewed and overhauled to avoid forcing fishermen from having to take their vessels out in poor weather conditions.

TESTIMONY OF ALAN DUJENSKI
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON MERCHANT MARINE AND FISHERIES
15 JUNE 1993

PAGE 15

Thank you for your concerns about safety in the commercial fishing industry, and for allowing me the opportunity to be able to provide input regarding the industry's concerns.

Alan R. Dujenski

PETTIT-MORRY COMPANY
520 Pike Street**Seattle, WA 98101-4095**

17 August 1993

**U.S. House of Representatives
Committee on Merchant Marine and Fisheries
Room 1334
Longworth House Office Building
Washington, D.C. 20515-6230**

RE: HEARINGS REGARDING COMMERCIAL FISHING VESSEL SAFETY

Honorable W.J. Tauzin and Thomas J. Manton:

Your letter of 30 June 1993 requested additional input regarding commercial fishing industry vessel safety. I have solicited input from the appropriate members of the industry to help provide valid and meaningful responses.

I wish to re-emphasize that the commercial fishing industry has in the past been an important part of our economy. It has proved to be a valuable source of jobs and has provided not only primary income, but has been an excellent source for supplemental income to thousands of retired personnel. This part of our economy is presently facing some critical times that may cause the demise of the commercial fishing industry as we know it.

I started to review some of the old records that provided some insight into the Commercial Fishing Industry Vessel Safety Act of 1988. It was interesting to note that in its infancy in the mid-1980s, the Act was very basic and appeared to be what the industry needed to address some of the safety concerns. There seemed to be an attempt to minimize regulations and to try to promote safety through voluntary standards and through "industry regulation". By industry regulation, I mean that there was a common thread throughout the records of trying to promote safer vessels through the insurance industry. One of the biggest problems was that insurance had become prohibitively expensive, plus the insurance underwriters were not willing to accept the gamble of insuring an industry plagued with casualties and losses. One of the main thrusts was to limit liability. It was apparent that the industry was becoming a fertile ground for attorneys to generate new business and the only way to promote affordable insurance was to first limit the risks by limiting liability. In conjunction with this, it gave general authority to the Coast Guard to develop basic safety requirements as they saw fit. The Act originally said to develop requirements for lifesaving, firefighting, navigation, etc.

Somehow the basics of what seemed to be a good law which would have provided for an effective safety management program, turned into the mess we have today. The attempts to limit liability disappeared completely (I am certain the trial lawyers were dancing in the streets) and for some reason Congress decided to dictate specifics of the requirements for safety, which eventually proved to be a major stumbling block for the Coast Guard to develop effective regulations. I wish to point out that until the sinking of the Aleutian Enterprise, and the Marine Board of Investigation that ensued, the Coast Guard had no idea of what the fishing industry was about. I am certain that if the Coast Guard, who are suppose to be the "safety experts" were not familiar with this faction of the maritime industry, Congress was even less informed. The "knee-jerk" reaction to some of the recent casualties, plus pressure from various entities forced some BAD LEGISLATION and some EQUALLY POOR AND INEFFECTIVE REGULATIONS.

Your thrust through the questions posed appears to ignore the existing problems and seek input only on proposed new legislation. We have learned a lot in the past 5 years since the Act was passed in 1988. Rather than provide more band-aids, we need to re-evaluate the fishing industry safety issue and the issue of limits to liability.

On the present course, you are economically killing-off a valuable source of jobs by requiring tens of thousands of dollars of safety equipment that in many instances are nothing more than band-aids on gaping wounds. Additionally,

the failure to limit liability will prove the most devastating. There is good evidence that two remaining underwriters for the higher risk vessels will not be underwriting insurance policies for them in the next two or three years.

The responses to your questions posed in your 30 June letter follows:

QUESTIONS TO THE PANEL

QUESTION 1: Do you feel safety will be enhanced if the proposed requirements are implemented?

LICENSING OF PERSONNEL AND INSPECTION OF VESSELS are two sound ideas for assurance of safer operations. Conceptually, the proposals are good but in practicality they won't work. Lets look at each of these issues separately:

LICENSING: The idea of ensuring personnel, especially the master of the vessel, has a minimal level of training is outstanding. Additionally, the problem skipper can have his license revoked to keep him from running other vessels. Where the problem arises is when reality is considered. The present licensing program run by the Coast Guard has degenerated to mariners being able to "study for the exam" rather than learn the material. Many of the license preparation schools are teaching testmanship and not seamanship. Also, letters noting sea-time are filled out by someone in personnel that has no concept of the individual's shipboard abilities. Besides the lack of familiarity with the person's skills, the personnel office has only general knowledge of the actual work the person performed. The letters say he served aboard a certain type vessel for a certain period of time and worked a certain schedule. If you take the inspected fleet as a whole, they have NO concept of how to run a training session or shipboard drill. Typically, the Coast Guard Marine Inspector will watch a disoriented crew go through some semblance of a drill, he will critique it, and make them run them until they can at least run one properly. This typically will be the last time the run a proper drill until the Coast Guard are on board for the next inspection. By 1995, the ability of the fishing industry to conduct proper drills and training will far surpass that of the inspected fleet of vessels. The same will be true regarding understanding vessel stability because mariners are not being taught stability, only how to pass that portion of the test.

What is needed is a **CERTIFICATION PROGRAM** showing that an individual has attended classes on various marine subjects and it provides evidence the person understands the basic principles. However, going back to reality, where are you going to get training facilities around the country? The Pacific Northwest is blessed with the number of resources available, but there are very few elsewhere.

VESSEL INSPECTION: This was addressed in detail in my 15 June 1993 written testimony but it is worth further discussion here. Two main proposals are being considered. These are the three-tiered system proposed by the Coast Guard and the two-tiered system proposed by the Advisory Committee:

COAST GUARD PROPOSAL

<u>VESSEL SIZE</u>	<u>INSPECTION</u>
LESS THAN 50'	SELF
50' < 79'	THIRD-PARTY
≥ 79'	COAST GUARD

ADVISORY COMMITTEE PROPOSAL

<u>VESSEL SIZE</u>	<u>INSPECTION</u>
LESS THAN 79'	SELF
≥ 79'	THIRD-PARTY

Neither system will work! Both share the commonality of SELF and THIRD-PARTY INSPECTIONS. The flaws associated with these two type inspection systems are as follows:

SELF INSPECTION: Who is going to teach the owner how to self inspect his vessel? The regulations are filled with ambiguities, there are several policy letters floating around, and the different references need fill two three-inch ring binders. You can't even get two Coast Guard offices to agree on what is required by the regulations. The vessel inspection guide which was published by the Coast Guard for their own personnel was incomplete and contained over 19 errors, yet it was still distributed to all the field units PERPETUATING WRONG INFORMATION AND CONFUSION. So back to the initial question, if the Coast Guard can't get their act together after several years (and these are suppose to be the experts) how can we expect the fishermen to perform any better?

If you look at the VOLUNTARY EXAMINATION PROGRAM, it is flawed and the value of obtaining a DECAL is misleading. As already noted, no two Coast Guard offices read the regulations the same way. But more importantly, the depth to which the Coast Guard inspect the vessel (or rather don't) gives a false impression of the "condition" of the safety items. One of the most important items is the BILGE PUMP which is used for dewatering of the vessel and the HIGH WATER ALARMS. Coast Guard is not checking the bilge system to see if it operates properly, only that they have one. Most inspections never test the bilge alarms to see if they are functioning. Flooding is one of the major causes of loss of vessels, yet the systems are only getting a cursory glance, at most. Another misleading item is that on larger processors where you may have 50 or more survival suits, the Coast Guard is only spot checking a handful of them. Additionally, there is no check to see if the suits are of the appropriate size for the different crew members; one size does not fit all. If a suit is too large, the individual could literally drown in the suit. An ill fitting suit can allow substantial water to enter the suit; a suit filled with water reduces survival time by 75%. Even worse would be a larger individual not being able to fit in the suit at all. The other problem with the voluntary examination program is that they are reaching only about 10% of the fleet of vessels, and that is not annually, that is 10% total. Which vessels do you think are volunteering for the exams? They are the more conscientious owners. The vessels that NEED the inspection aren't getting it and those are the ones that (incomplete as they are) are the casualties waiting to happen! With the problems noted above, how can we expect the the SELF INSPECTION PROGRAM to have any meaningful success???

THIRD-PARTY EXAMINATIONS: Except for the classification societies such as the American Bureau of Shipping or Det Norske Veritas, the THIRD-PARTY examiners will generally be MARINE SURVEYORS. At present, there are no requirements for being a marine surveyor. Anyone can call himself a marine surveyor and start a business for the cost of a business license only. Also, most of the surveyors are not insured. From an insurance industry perspective, we are stuck with what is available. Oh, sure, there are a few good marine surveyors around, but not many which are familiar with fishing vessels. There wasn't a lot of money in the surveying of fishing vessels and therefore attracted very few surveyors; many of which do them only occasionally. If or when THIRD-PARTY examinations would be required, you can bet they will come out of the woodwork ; many of which were pleasure boat surveyors. UNTIL THERE IS SOME NATIONAL STANDARD AND LICENSING PROGRAM ESTABLISHED FOR MARINE SURVEYORS THE THIRD-PARTY INSPECTION PROGRAM CAN'T WORK!

COAST GUARD INSPECTIONS: The Coast Guard inspection is not a viable alternative. As discussed in my 15 June testimony, you have too high a turn over rate to allow the inspectors to become proficient. You will be imposing USER FEES on top of expenses for Coast Guard to go to remote areas to inspect these vessels. The number of new Coast Guard personnel and the cost for these additional personnel are grossly underestimated. Initially inspections will be slow because both vessel owners and Coast Guard will be getting familiar with the regulations and working out the many areas of ambiguity. You will need to reconsider the number of manhours per vessel based upon repeated visits and travel to remote areas plus extensive administrative hours associated not only associated with the inspection but also with trying to resolve regulatory interpretations. Another important

consideration is that the larger vessels which fall under the Coast Guard proposed inspection requirement, are available only a few months each year. For the initial 4-5 years until the program gets established, you can multiply the Coast Guard figures by 4 (at a minimum) to do the program right. The cost, besides the number of inspectors being off, it appears that the Coast Guard did not take into account the full cost of the new inspector billets. Besides salaries, you need to consider the benefits package, healthcare, etc. for these persons plus the cost of training. I would say you could increase the annual cost to \$70,000-\$100,000 per inspector. Between the number of inspectors needed and the cost per inspector, I would say the Coast Guard could be off by as much as a factor of 10 when they estimated the cost of new inspectors needed.

QUESTION 2: Will insurance rates be affected by these safety programs?

The affect on insurance rates will be minimal. First, the safety regulations only affect basically hull insurance. The greatest cost to the insurance industry is the unlimited liability in claims through the Jones Act for injury claims. What would be a typical \$25,000 claim under Workmen's Compensation, a lawyer will file for say \$75,000, and the judge will end up awarding \$150,000. In an open forum a year or two ago, a local judge stood up and stated it was his intention to "stick it to those greedy fishing vessel owners". Congress recognized the need to limit liability back at the inception of the Safety Act. The situation is no better; as a matter of fact it has become worse. As noted in my preliminary statement, the courts will eliminate underwriters for the larger vessels in the high risk fisheries with in the next two years. Additionally, for all practical purposes, the P&I insurance has become unemployment insurance for the industry. It is becoming more prevalent, the filing of claims in the 35 month of the 3 year limit for claims. Because of the necessity to resolve by the 36th month, many claims are being paid uncontested. The claims seem to be inversely proportional to the length of fishing seasons.

Insurance rates are based upon statistical data. We have a problem in that there is no comprehensive data base upon which to develop meaningful statistics. The Coast Guard's database probably reflects only about 30-40% of the actual number of casualties. I recently requested a printout from the Coast Guard on casualties for the Pacific area. In reviewing the number of deaths noted for just the past few years, they are off by half based upon information from the Coast Guard in Alaska. We do have a new database being generated from the Marine Index Bureau. What is interesting is that the Coast Guard is not making this data available to the industry; something about privacy of the information reported. They won't make available general statistics to the industry from the MIB, yet you can get specific vessel names, owners, etc. with no problem. You have some information going into only the Coast Guard database, some only to MIB, and some into both. How they are going to make sense from these two separate databases with some unknown quantity of overlap should prove to be interesting. The bottom line is that there still is no good source for statistics such as you have with home or automobile insurance. I wish to point out that the information out is only as good as the input. How significant can the input be when these reports for the most part are being filed and/or generated by clerks and administrators, most of whom have never even been on a vessel? A significant item missed from both of the databases are the premiums paid out. The resultant from all this the extreme difficulty of being able to accurately assess losses especially when coupled with the fact they have to project for three years beyond (time limit for claims).

QUESTION 3: Do you have any suggestions to improve safety in the fishing industry as a whole?

The answer is YES. This issue of what has been the prime contributors to fishing vessels casualties was discussed in my written testimony of 15 June 1993. The causes being related to:

LACK OF STABILITY**LACK OF WATERTIGHT INTEGRITY****LACK OF DEWATERING CAPABILITY****LACK OF EDUCATION OF GOOD MARINE PRACTICES, SEAMANSHIP, AND SAFETY****FATIGUE**

These general categories rank differently and vary according to areas and type of fisheries. But regardless of the rank ordering, these are the main contributors to loss of life and property. The regulations should be centered around these items.

RECOMMENDATIONS:

1. **THE EXISTING REGULATIONS NEED TO BE OVERHAULED.** By this I mean there were a lot of regulations put in by some regulator because they "thought it was a good idea". There are about 30 or more areas where this exists but for brevity here is one example: UPDATED NAUTICAL CHARTS. It seems innocent enough and practical until you actually have to comply. When you buy charts they can be as much as 3-4 years old. That means the fisherman has to go back through 3-4 years of Notice to Mariners (weekly publications) looking for corrections. Where does he get them? Most Coast Guard stations don't keep them that far back. He could spend weeks first trying to locate the Notice to Mariners, then several weeks reading through them looking for corrections. He has expended all these manhours and for what? How many casualties can the Coast Guard cite specific instances where uncorrected charts resulted in a fishing vessel casualty. I can't recall any in my five years in the fishing vessel safety program. There were people who misjudged areas by forgetting to take into the loss of water depth due to swells and they got hung up on a bar or jetty trying to take a short cut. This had nothing to do with chart corrections, only poor judgment. Consider the fact that the majority of vessels in the fishing fleet are less than 60 feet in length and draw only a few feet of water and there would be very little likelihood that an uncorrected chart would get them in trouble. A majority of the smaller vessels usually have been fishing the same waters for years and, like pilots generally need no charts. Fishermen who are entering a new area can contact the Coast Guard or some other vessels in the area to check if there are any significant navigational aid changes. There are many more such examples and some even more onerous and more costly.

The present set of regulations require two three-inch ring binders of other documents the regulations refer to. I don't think you can find even one Coast Guard Station that has all these references; this is not right to expect from the fishermen. They should be much simpler than that.

2. **DEVELOP SIMPLE MEANINGFUL REQUIREMENTS:** Based upon the key five items noted above that are BASIC requirements which are directly related to typical marine casualties and are COST EFFECTIVE. I will be submitting a proposed simplified set of regulations under separate cover.

3. DISBAND THE EXISTING ADVISORY COMMITTEE: The advisory committee, although good in concept, was generally ineffective, and did and does not adequately represent the cross section of the industry. For example, a part time Naval Architect or marine surveyor does not and cannot represent the naval architectural concerns from around the country. The Coast Guard totally ignored the input from the Pacific Northwest group NAVAL ARCHITECTS FOR FISHING VESSEL SAFETY. This was an organization formed specifically to review the regulations and provide meaningful input. The group was comprised of over 50 LICENSED PROFESSIONAL NAVAL ARCHITECTS (Did you know that Washington and Oregon are the only states that licensed naval architects as professional engineers). Thousands of hours from highly experienced professionals provided meaningful input ONLY TO BE IGNORED BY THE COAST GUARD. The group, after two years disbanded because of frustration. If the Coast Guard ignored there input, how much are they going to value that of one person???

The Coast Guard states that two-thirds of the fishing fleet are "small boats" yet only one person represents the small boat fleet and only from his particular area of the country. The only one to benefit from this committee was the New Jersey consortium that got \$300,000 to put together a training program that basically existed in the Pacific Northwest for the past decade.

Better use of the tax dollar would be to have the Coast Guard District Fishing Vessel Coordinator conduct meetings and solicit input from their respective members of the fishing industry and have them present that input to the regulators in Washington, D.C. I feel this would be far more representative of the industry. After all, the Coast Guard has spent over \$15,000,000 on Total Quality Management Training which is nothing more than learning to listen to their customers; what better uses of this investment?

4. TRIAL LICENSING AND INSPECTION PROGRAM: Ross Perot, during his bit for the presidency, made a very valid point that we should heed. He says that new programs should be like new cars, you don't build them for production without making a prototype. We should implement that idea here. The concept of the licensing and inspection program are good, but before we screw up a good idea that has the best potential of reducing the loss of lives and property, why not do a trial licensing and inspection program with about 100-200 high risk vessels for about a three year period and review the results. We can see what does and doesn't work and make modifications as necessary before going nationally with this program. It is a win-win situation for all involved. Rather than guessing at what works, we will have conclusive evidence. This will sell the program to the industry after the skepticism resulting from the requirements to-date.

5. ALL THIRD-PARTY INSPECTIONS: This was proposed in my 15 June 1993 written testimony. It is more cost effective and would create 1500-3000 jobs in the maritime industry. The tax payer will be required to foot the bill for new Coast Guard marine inspectors at the cost of \$70,000-\$100,000 annually per inspector for probably about 100 new inspectors. Additionally, the fishermen will be required to pay a USER FEE of about \$100 per hour for the marine inspector (this is about double of what marine surveyors charge). It is important to develop a licensing program for surveyors to ensure a minimal level of expertise and provide for accountability.

6. INSPECTION PROGRAM ADMINISTRATION: The inspection program can easily be administered through the present Certification of Documentation program and the Certification for State Numbers program. Before you can get your document or state numbers or renew them you must submit proof of satisfactory inspection. The Coast Guard can develop an "inspection book" similar to the ones they use for presently inspected vessels for use by the surveyors. The surveyors would issue a Certificate of Compliance similar to that presently being required for processing vessels except that hull and machinery condition would be included.

QUESTION 4: Mr. Adler referred to his belief that pleasure boat operators are in need of safety training more so than fishing vessel operators. What problems do fishermen experience related to pleasure boaters?

First let me start out by stating that I strongly believe that no one should be allowed to operate a vessel without some minimum basic level of seamanship. This runs the range from the weekend recreational boat operator to the large fishing vessels. The only question should be what level of education is required. I have read too many search and rescue messages where vessel operators were unfamiliar with basic rules of the road, navigation, and seamanship. The recreational boater ventures out on the ocean generally only a few weekends a year compared to the average fisherman spending several months at sea. With the exception of a few ocean-going yachtsmen, recreational boaters have no concept of what seamanship is about. Based upon discussions with some members of the Coast Guard Auxiliary, alcohol is widely used by recreational boaters. The fishermen encounter, like the rest of the commercial fleet, many "near-miss" collisions because of the general lack of navigation prowess or seamanship skills. The statistics don't reflect the true picture, because since the Coast Guard turned the Boating Safety Program over to the states, the program for most of the states has degenerated and has resulted in poor reporting and investigation of casualties.

QUESTION 5: Do you agree with the Coast Guard inspection proposal? Would it increase safety and therefore decrease insurance rates?

I have addressed these issues in detail in QUESTION 1 above and in my written testimony of 15 June 1993. I disagree with the Coast Guard proposal and strongly feel it can be compared to shadow dancing, a lot of motion but no substance. Regarding the insurance, until limits of liability are established, the P&I claims will overshadow the savings in hull claims. On the present course, there may not be any underwriters for the larger high risk vessels in two to three years. The short seasons, high cost of complying with regulatory safety requirements is not leaving any discretionary income available for insurance on many of the smaller vessels, especially those that fish off Washington and Oregon.

QUESTION 6: Are insurance rates for individual quota fisheries, such as surf clam fisheries, lower than those fishing activities which you referred to as Olympic style fisheries?

The issue is not that clear cut, but in general, yes they are. Part of the problem is that many fishermen today, because of the shorter seasons and lower quotas, are involved in multiple fisheries.

QUESTION 7: What do you think can be done to improve safety in the fishing industry?

I have addressed this question both in QUESTION 3 above and in my written testimony of 15 June 1993. Licensing and inspection are two key items necessary to reducing losses BUT NOT AS OUTLINED BY THE COAST GUARD.

QUESTION 8: Do any witnesses agree with Mr. Adler that we need individual fishing quotas (IFQs) to significantly improve fishing safety?

The issue of IFQs is very controversial; mostly from the economic impact. From a safety perspective, in some fisheries they would make a difference, and some very little. If the Fish and Game and NMFS were more in tune with the industry and less bureaucratic, for the short

openers they could have the flexibility to delay the opening until the front passed through. The opening can be announced by radio. This would be particularly true for the halibut fisheries. For the longer seasons, it would have minimal affect. The IFQ for short seasons also may have a significant economic impact. At present, you have tons of fish being dumped on the market all at once which results in low market prices. In Canada, where they have the IFQ, they will get about \$3.00 per pound as opposed to the U.S. price of only \$0.95 per pound. I believe some driving forces to the losses are over-capitalization of the industry, making competition intense for a dwindling resource. This coupled with poor weather forecasting service and regulators not in touch with the industry are spelling out disaster. IFQs may be appropriate for some fisheries, but they are not the general cure-all. I think that a careful study needs to be done of countries using IFQs to get a better measure of its effectiveness on safety.

QUESTIONS DIRECTED TO ALAN DUJENSKI

QUESTION 1: Could there be another way to address stability that the industry and the naval architects can work with?

The answer is emphatically YES! For vessels less than 79 feet in length, a roll test can be used effectively. This method measures the period of roll of the vessel at different loading conditions and plug the results into a standard formula and compare to a standard established by IMO. This has been a method that has been used successfully by naval architects for smaller vessels for decades. Performed properly, it will give the same general results of a full stability analysis. The full stability analysis costs from \$5,000 to \$10,000 for the smaller vessels as opposed to ONLY \$450 for a roll test. Stability is directly related to the waterplane area of the vessel (the area of the shape the hull makes in the water surface). Since the waterplane area can generally change dramatically in varying sea conditions due to waves, the stability changes likewise. Both methods only give close estimates on stability; neither of which take into account changing waterplane conditions. For a fraction of the cost, a fisherman could get a valuable stability analysis of his vessel.

QUESTION 2: How would you address watertight integrity for existing vessels under 79 feet and for wooden vessels?

The issue needs to be addressed separately for NEW vessels and for EXISTING vessels:

NEW VESSELS: At a minimum, at least two (02) watertight bulkheads need to be designed into the vessel, one forward and aft of the machinery space. On vessels of about 50-79 feet an additional collision bulkhead up forward is recommended. Most vessels over the years designed by naval architects employed these features in the original designs, but often were subsequently modified by owners during the construction stages.

EXISTING VESSELS: Where practical, the two watertight bulkheads fore and aft of the machinery space should be required with a five years compliance phase-in. For existing wood hulls, this is generally impractical. An alternative could be a drydocking requirement with close inspection of hull, hull penetrations, and sea valves.

For all vessels, both new and existing, adequate dewatering capabilities need to be addressed. Many of the casualties which were attributed to stability were really flooding problems initially that led to instability of the vessel. At present the regulations only say you need bilge pump capabilities, they don't address capacities. The issue of bilge pumps was addressed in my 15 June written testimony and will be the subject of future correspondence.

QUESTION 3: There have been several comments on the stability rules and the confusion and fear of compliance that exists. What type of stability program could marine engineers or naval architects support that address their liability concerns and the high costs to fishermen to comply?

What is interesting, the Coast Guard when questioned, could not produce one stability related fishing vessel casualty where a vessel had a stability analysis BY ANY METHOD and was operating within the limits of the report. IMO generally has been used as a guideline, but naval architects used their judgment and experience in evaluating conditions that were close but did not meet the standards. No standard is exacting and can guarantee a vessel won't have stability problems because there a lot of assumptions made. For vessels greater than 79 feet the Coast Guard took the IMO standard and ADDED more stringent requirements to them based solely upon what seemed to be good ideas by some desk jockeys that have never seen a fishing vessel. These young men with no fishing vessel experience IGNORED the advice and input of over fifty highly qualified and experienced naval architects from the Pacific Northwest during the regulatory process.

For vessels less than 79 feet the roll test discussed in QUESTION 1 above is an acceptable method using IMO standards. Vessels more than 79 feet, a full stability analysis is acceptable using the IMO standards. However, the naval architect should be allowed to use his discretion if he qualifies his variance.

There should be an expiration period for a stability analysis of five (5) years or if alterations are made. There is a real problem in the industry where significant modifications are being made to the vessel after the stability analysis and the naval architect is not being consulted. However if a marine casualty occurs, the naval architect is one of the prime candidates for law suits. Getting back to the limits on the analysis, a stability re-test would not be required unless deemed necessary by the naval architect. In many cases there would only be an endorsement required. If you allowed roll tests which only costs a fraction of what a full stability analysis would cost, the fisherman would be more willing to recheck his vessels stability. As pointed out previously, the roll test is only about \$450 vs. up to \$10,000 for the regular stability analysis.

What is the Coast Guard's proposal for a simplified test? Flood your vessel and if it still floats you don't need an analysis. Who in their right mind would perform such a test other than a person fishing out of a skiff?

QUESTION 4: What are your views about the Advisory Committee recommending a 2-tiered inspection program over the Coast Guard's 3-tiered program.

I discussed the issued in detail in QUESTION 1 (Questions to the general panel). In both cases the use of "self-inspection" is not a meaningful option. I feel the Coast Guard proposed this option because it was a convenient solution to dealing with the mass of vessels in the industry. I am confused as to why to Advisory Committee would have made a similar proposal in that they are suppose to "advise" the Coast Guard not only of the impact of suggested requirements but also propose items that will make the industry safer.

QUESTION 5: What are insurance companies doing to encourage or asslat commercial fishermen in promoting safety?

In the Pacific Northwest for the past 4-5 years, one marine underwriter has offered rebates for individuals taking classes up to \$500 per class. When vessels change their tankage, they are required to get a stability analysis by most of the underwriters. There are several insurance pools established on the west coast that set their own standards to be a member of that pool such as frequent drydockings and surveys. I understand that the East Coast

insurance companies are offering discounts if vessels get a "safety decal". The decal only denotes that you have the equipment, there is no assurance of your knowledge of the equipment or the general condition of the hull and machinery. The issue of decals was discussed in QUESTION 1 (Questions to Panel) under Self Inspections. Further investigation will show that that insurance rates for the East Coast and the Gulf area are higher than the West Coast rates and have more margin to offer discounts. As was discussed in the hearings only a percentage of the boats have insurance and therefore typically they are your better vessels; the BAD BOATS would not be affected by the insurance programs.

ADDITIONAL COMMENTS

1. CREATING OF JOBS BY REQUIRING THIRD-PARTY INSPECTIONS: During the hearings on 15 June, I raised the issue of 1500-3000 jobs would be created in the marine industry if THIRD-PARTY inspections were made mandatory. Congressman COBLE (North Carolina) asked me to provide information as to how I arrived at these numbers.

Using the Coast Guard's number of 130,000 commercial vessels and that a surveyor, on an average, would conduct about 40-45 surveys per year, this would result in a need for about 3000 surveyors. There presently are less than a hundred marine surveyors that do commercial fishing boats. The low end number is based upon the figure that I believe is closer to the actual number of commercial fishing vessels: 60,000. The Coast Guard number was generated as a guess when the study of fishing vessels was first started. The problem is that there are no good databases by which an exact number can be obtained. In the Coast Guard database, vessels can have multiple endorsements (and most do). When a computer search is done for fishing vessels you get a number that could be 2-3 times the actual number of fishing industry vessels. For state numbered boats you have a similar problem. Many states, like Hawaii, offer fuel rebates for commercial fishing vessels. People will register their vessels commercially to take advantage of this. Evaluating the permits does little good since many vessels hold multiple permits. A study performed in 1989 addressing the economic impact of the fishing industry to the Pacific Northwest shows a total number of fishing vessels to be around 20,000; Coast Guard figures are closer to 50,000 for California, Oregon, Washington, and Alaska. The 130,000 figure by the Coast Guard is a good example of if you tell a lie often enough, people will come to accept it as fact. The fact remains, it is more cost effective to use THIRD-PARTY vs. Coast Guard (see COMMENT 1 to General Panel Questions). Also it will create much needed jobs in the maritime industry which has been in a steady decline for the past decade. This was also an issue discussed in my written testimony of 15 June.

2. PROBLEMS WITH EXISTING REGULATIONS: Under a separate cover letter I will be providing a detailed list of problems with the existing regulations.

3. QUESTIONING COAST GUARD'S COMMITMENT TO THE FISHING VESSEL SAFETY PROGRAM: I think an inquiry should be made into whether the Coast Guard is taking this program seriously or is performing some more shadow dancing (motion without substance):

- a. Why did the Coast Guard Eleventh District (California) take two years to fill the fishing vessel safety billets?
- b. Why did Coast Guard Headquarters have a complete turn-over of their fishing vessel staff (except one person)?

- c. Why did the Coast Guard award a contract to conduct a study on commercial fishing vessel stability to a Canadian company that had no familiarity with U.S. fishing vessels? Furthermore, why was the company paid for information that was of little or no value?
- d. Why did the Coast Guard originally in their regulations give a phase in time of six years for the 121.5 EPIRBS then when a conflict arose between FCC and USCG regulations fail to give the fishermen the benefit of the conflict? Why did the Coast Guard deny being aware of the FCC regulation, when the Coast Guard signed off on the requirement?
- e. Why have there been over a hundred failures to the new 406 MHZ EPIRB ranging from faulty electronics to faulty brackets and no alert has gone out to the industry (except the one forced by the First Coast Guard District on the KODEN / LITTON model)?
- f. Why did the Coast Guard not take into account that the lithium batteries in the 406 MHZ EPIRB can not be transported by air except on certain cargo plane only? For repairs or battery replacement it costs the owner of the unit about \$200.
- g. Why was the Coast Guard aware of chemical lights for survival suits and lifejackets having a problem of performing properly in cold waters for about two years but never notified the industry? Why when questioned about changing the regulations to require lights that meet SOLAS requirements (and therefore would be suitable for cold waters) advised that these are only secondary or tertiary safety devices and there were more pressing issues to deal with?
- h. Survival suits undergo lengthy and costly approval requirements and yet the Coast Guard established a policy that the suits did not have to be serviced by a manufacturer's authorized representative or Coast Guard approved facility?
- i. Why do the regulations (and the Preamble) state that existing liferafts can be used as long as they are maintained serviceable yet the Coast Guard (through policy letters which are not readily available to the public) requires existing rafts to be serviced at Coast Guard approved facilities and to a Coast Guard approved manual? Hasn't the Coast Guard basically made these unapproved rafts approved? How could these significant changes be made without following the regulatory process?
- j. The Coast Guard in 1978 say that fishing industry vessels were not merchant vessels and then in 1988 state that they were merchant vessels. When queried by the Marine Safety Office in Seattle over a year ago for a resolution, Coast Guard headquarters has yet to respond leaving industry in limbo and subject to arbitrary enforcement action? This determination requires certain square-footage of living space and a dedicated hospital space that generally is costly and sometimes not practicable on some older vessel designs.
- k. With all the confusion regarding the regulations over the past years, why did the Coast Guard elect to distribute guidelines to their field personnel that contained over 19 substantive errors?

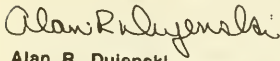
4. ON A POSITIVE NOTE: Oregon should be very thankful for the Fishing Vessel Safety Program in their state; it is unparalleled in its excellence. Captain Townley and his staff at the Marine Safety Office in Portland have integrated all Coast Guard resources, including coastal stations into full support of dockside examinations and training classes for the industry. The Coast Guard and the industry meet on a regular basis to openly discuss safety and enforcement issues. Ginny Goblirsch (Oregon Sea Grant Program, Newport) has fought hard to establish a comprehensive training program throughout the state for the fishermen. If you want to see how a fishing vessel safety program should be run, go to Oregon!

PETTIT-MORRY COMPANY

520 Pike Street

Seattle, WA 98101-4095

I have been involved with the fishing industry for over five years trying to promote safety and to develop some meaningful regulations. I got the opportunity to work with all factions of the industry and the different levels of the Coast Guard. When your constituents call or write you regarding the problems and frustrations they are experiencing, listen to them. They are calling you out of frustration with the SYSTEM. The system is broken and the frustration felt by the fishermen are shared by many of the Coast Guardsmen out in the field units. Unfortunately, they can't complain and they get caught up between a system that is insensitive and the fishermen who are part of their communities. If you went out and held some town meetings you would find people that are genuinely concerned about safety but can't afford the whims of some regulator in Washington D.C. If you are truly concerned about safety and also about your constituents, you will carefully reflect upon the comments presented here and the cries from the industry and take a better look at a "good idea that somehow has gone astray".



Alan R. Dujenski

TESTIMONY - DAVID L. GREEN - JUNE 15, 1993

House of Representatives - Subcommittee on Coast Guard and
Navigation and Fisheries Management

Good Day, Mr. Chairman,

I am David Green, a Naval Architect and Marine Engineer from Seattle, Washington. Until recently I was president, Jensen Maritime Consultants, Inc. Seattle, Washington, a naval architecture/marine engineering firm whose principal clientele for the past 30 years has been the Northwest and Alaskan fishermen. I am also chairman of an ad hoc committee known as Naval Architects for Fishing Vessel Safety and on the Board of Directors, Fishing Vessels Owners Association (NPFVOA) Safety Program. Otherwise, my background includes 24 years as a U.S. Coast Guard Naval engineer with 14 years second career employment as a shipyard manager and engineer.

I very much appreciate the opportunity to appear before this panel. I have been rather outspoken and critical of the U.S. Coast Guard regarding many aspects of both proposed and final rules regarding fishing vessel safety regulations. My objective has always been to be constructive, but often it is necessary to be very explicit to make a point. My hope is to continue that tact in this presentation and properly represent not only myself but other naval architects, owners, and fishermen.

I understand these hearings have specific interest in industry reaction to the supplemental Notice of Proposed Rule Marking (SNPRM) of October 27, 1992, and U.S. Coast Guard proposals relative to fishing industry vessel inspection and operator licensing.

I will address those topics in the same order, but first there is another very fundamental and important factor: Communications.

COMMUNICATIONS

Since the early 1980's, the Coast Guard has attempted to communicate with the industry at large using traditional bureaucratic tools: The Federal Register and Navigation and Inspection Circulars (NAVIC). In both cases the readership is generally limited to paying subscribers and communication has not been good.

Problem #1 - These means do not deliver the words to the 100,000 or so vessel owners.

A NAVIC issued in 1985 entitled "Voluntary Safety Standards for Uninspected Fishing Vessels" was reasonably readable. The fishing industry vessel safety regulations 46 CFR 28 are very difficult for the fishermen to read and understand. The proposed changes in the SNPRM, October 27, 1992 were impossible for lay owners and fishermen to understand. Even technical and legal minds can not agree upon the meaning.

Problem #2 - These regulations can directly affect the lives and habits of the 100,000 vessel owners and the additional 150,000 people they employ, but the affected people can't solve the editorial riddles of the regulatory format and phraseology that include conditional qualifications, exceptions. special cases, etc.

The only bright spot in the communications jumble is that if a particular piece of equipment is required for everyone, free enterprise solves the problem as the vendors actively pursue the market.

SUPPLEMENTAL NOTICE OF PROPOSED RULE MARKING (SNPRM),
OCTOBER 27, 1992:

This was a terrible document that principally addressed stability standards and the implementation of the Aleutian Trade Act. It was terrible in the fact that:

- * Explanatory text did not agree with the actual technical requirement of the proposed changes.
- * A huge portion of the technical requirements were either so ambiguous or otherwise confusing that they were unenforceable.
- * The proposed implementation of the Aleutian Trade Act appeared to be an outrageous manipulation of the law to suit commercial interests of large carriers. This had nothing to do with safety.

Stability Standards

Subpart E of the regulations as published by Final Rule, September 15, 1991, did not include specific stability standards for vessels under 79-ft. The reason for that omission was massive public comment that the proposed rules for vessels under 79-ft. were not proper, particularly for existing boats.

We, the industry, were challenged to solve the problem; for free of course. In the meantime, a contract was awarded to a Canadian firm to study vessel designs and their associated stability characteristics. The scope of works for that contract was uninformed and pie-in-the sky and at face value a wasted effort. That Canadian firm had virtually no knowledge of fishing vessels and solicited free assistance from firms throughout the United States. We, the industry, did not solve the problem of proposing a standard for these smaller vessels, nor has the rest of the world solved the problem.

The rules proposed by SNPRM were virtually the same as those previously proposed. The applicability, however, was broadened to include all vessels under 79-ft. regardless of operating area.

The introductory discussion of the rules specifically ruled out the use of roll tests for existing smaller vessels with no documentation of hull form or other data essential to final stability study. Such tests were used by the British and we have used them in the Northwest in conjunction with insurance pools. We have not judged a vessels stability to be necessarily good to a specific standard, but rather that it compares well or not with other similar vessels. The insurance pools use this data along with other considerations in consenting to or denying pool membership.

The roll test has great limitations, but it is also one of the oldest forms of stability evaluation. It is included in all textbooks and is even a data entry on official U.S. Coast Guard Inclining Experiment forms.

While specific standards were only listed for new and major conversion vessels between 50 and 79 feet, all vessels were required to have owner letters of attestation of proper stability based upon a "qualified (and named) individual"; that the master understood the instructions; etc., etc...

Philosophically, this is a fine bureaucratic solution -- have someone attest to something and sign their name. The problem is fourfold:

- * For a "qualified individual" to offer advice on what proper stability measures are required, some standard or basis for value judgement is needed.
- * The only published standards are those for the new vessels. A proper study to these standards is expensive (\$3 - 5000) and only a very few of the existing 120,000 vessels under 79-ft. would pass.
- * De facto, however, these standards do apply to all vessels under 79-ft. The courts have taken care of that by finding that NAVIC 5-86, which includes those same standards as recommended minimums, applies as a seaworthiness standard.
- * So how is an owner to get technical support to have a letter of attestation? I don't know.

The real problem relative to stability is that it has undoubtedly been over-emphasized. All sinkings are not lack of stability. Most are simply sinkings - just like ships that were torpedoed, they rolled over after sufficient flooding.

It is important to note that present fishing vessel regulations do not directly address watertightness issues. Yet water front antidotes and casualty investigations abound with clear evidence of unscheduled flooding.

The most effective action to date relative to watertightness was requiring load lines for "process vessels".

"Process vessels" is properly in quote marks as the legal definition of processing is a miscarriage. There are a thousand tales to be told of the dividing line between "processing" and not processing. My favorites include: Heading and gutting and freezing is not processing. Cut off the tail and freeze and it is processing.

The consequence is a large number of vessels with "process crews" sized to carry out these "non-processing" activities were by-passed by load line attention to watertightness.

The antidotal and investigative evidence previously referenced applies to all sizes of vessels, mostly with small crews.

This omission in regulatory attention to watertightness relate directly to why some people die each year.

Does that mean load lines are the proper answer to this problem? No! It would be one answer, but the expense would be enormous. I fail to see why present law prevents setting forth requirements to achieve watertightness standards similar to those of a load line program. Time phased accomplishment could be permitted.

I expect this might stir a large response from owners. I can also say that this would be money spent to actually abate identified safety hazards.

The trick is development of an intelligent, comprehensible requirement. The Coast Guard track record is poor so far.

How does this relate to stability? If you can not define practical workable stability standards for existing vessels,

look for a positive alternative. Improving watertight integrity is one positive step. Education is another.

To summarize stability issues:

- * SNPRM proposals to solve stability issues by letters-of-attestation is a de facto imposition of new vessel standards on all small vessels. It is misguided and unenforceable and should be discarded.
- * Except for definition of major conversion, proposed standards for new and major conversion vessels 50 - 79 ft. are generally satisfactory.
- * For existing vessels 50 - 79 ft., present regulatory guidance to not degrade existing stability status should apply.
- * All vessels under 50-ft. should be left out of stability regulations.
- * Stability education should be required for all licenses.
- * Regulations should specifically address hull watertightness, similar in principle to load line regulations and apply to all non-load line vessels.
- * The Coast Guard should be required to seek industry expertise to redraft the entire stability subpart to make it both comprehensive and readable.

ALEUTIAN TRADE ACT

The proposed implementation of the Aleutian Trade Act included requirements that each of the existing fish tender vessels in that trade immediately comply with subpart D of the fishing vessel regulations. This subpart addresses a relative hodge-podge of technical issues: CO2 extinguishing systems, electrical, some piping, etc... It was specifically directed toward vessels with larger crews which would be conducting both official and unofficial processing.

While offering that this would make these existing tender vessels safer and comparable to "inspected vessels", the Coast Guard completely looked past the fact that most of the required changes would not be required on an "inspected vessel" of the same tonnage. Probably a half million dollars a vessel is representative of the costs.

I really don't know the intent of the Aleutian Trade Act, but I cannot believe the proposed implementation requirements fit. As I read the USCA, such massive changes to existing vessels were not permitted.

I hope that this issue will be cleared up for the final ruling. It was shocking to see commercial interest being so obviously misrepresented as a safety issue. It also required needless energy and effort to challenge this improper representation.

If special regulations are required for this small group of Aleutian Trade Act vessels, they should be specially developed to abate death, injury, or property loss trends for these ships. I am not aware of either serious incidents or trends in this regard.

FISHING INDUSTRY VESSEL INSPECTION PROPOSALS

It is important to recognize there has been progress with safety in the fishing industry.

Attitudes have improved substantially and competent, aggressive safety managers are visible in corporate organizations. The interest and participation in safety training is increasing.

I believe that subparts A, B, and C of the safety regulations are basically well founded. They have established norms for minimum life saving and safety and other equipment and most importantly, addressed crew training.

The only real problems with Subpart F for process vessels is the definition of processing. It is too technical and excluded a substantial number of vessels that are processors in every sense of the English language.

Following the loss of the ALEUTIAN ENTERPRISE, the requirements for load lining processors were finally implemented. This was a very important contribution to fleet safety as it number one, made hulls watertight and number two, rechecked stability. The real curiosity about load line requirements for fishing industry vessels is that they have never been incorporated into the Code of Federal Regulations.

To me the progress became visible beginning in about 1989. Since about 1991 there has been increasing momentum.

One fundamental question is when increased safety activity will abate the occupational hazards to reduce death and injury totals. A more important question is what specific safety activity will modify these totals.

A NIOSH representative stationed in Alaska to gather data and study fishing industry statistics recently spoke at a NPFVOA board meeting. There is absolutely no question about it - the hazard is drowning.

When it is proposed that some form of vessel inspection program may alter the drowning habits of fishermen in Alaskan waters I can only ask, how?

The statistics presented clearly indicated that for the recent three years studied, fatalities were for vessels less than 150 ft.! To me this clearly indicates the losses are still in the traditional North Pacific fishing fleet, not in the recently added (1988 and after) factory trawler, processor fleet. No doubt, the large vessels represent individual larger risks, but they have not significantly contributed to statistics.

The Coast Guard presentation of recommended inspection programs for the fishing industry offers that there is a natural and statistical break in data for vessels less than 50 ft., 50 to 79 ft. and over 79 ft. It is further offered that the dreadful death rate/100,000 for the over 79 ft. vessels deserved U.S. Coast Guard inspection.

No doubt about it, properly conceived regulations as a basis for inspection can enhance the fundamental material and functional safety of a vessel. But will it prevent drowning?

A fundamental problem with available statistics is reliability. This has been recognized and commented upon in all of the studies mandated by Fishing Vessel Safety Act. It would seem the total fatalities are probably

representative but the fundamental causes are questionable. I can attest to reading investigations where flooding is clearly identified and the cause of vessel loss is listed as capsize (unstable). When the cause statistics are not consistently validated the cure is extremely difficult.

A second problem with statistics is timeliness. The real safety activity from the 1988 act has just begun. Due to communication problems cited earlier, I don't believe that much of the effort has reached more than 5-10% of the total community. I earnestly hope that statistical progress will become evident as progress in safety awareness moves forward. Right now, however, the really available data basically predates any efforts of regulations to date.

When any new regulations or curriculum of interests is introduced to a population, education of that population is mandatory before effects can be either expected or measured. For fishing vessel safety it is not time to introduce another valley of regulations.

It is time, however, to seriously pursue the real causes of vessel losses that have caused these drownings. I believe the NIOSH representative from Alaska was making a good effort, however, he was not equipped to analyze the vessel deficiencies leading to the loss. I believe it would be very beneficial for the Coast guard to dedicate a small team of technically competent individuals to perform separate and consistent evaluations and investigations of all fatality incidents for a year. I further believe that the results of such an effort might identify patterns in material deficiencies, but would confirm errors in judgement and inexperience relative to vessel loading, navigation, proper utilization of existing vessel features, etc. ... These are hazards which can be abated by education, but not more regulation and inspection.

This is in no way a condemnation of fishing vessel operators. The sea is an unforgiving environment. Virtually all of the operators of the 150 ft. and smaller vessels learned their trade by going to sea. But vessels have become larger and more complex and competition on the fishing grounds keener. Quite simply, an unsupplemented apprenticeship has short comings just as an entirely formal education has short comings. I urge that education be strongly endorsed and all consideration of an inspection program be deferred 4 years.

Unmentioned in the Coast Guard recommendation for an inspection program is the progress on international agreements relative to fishing industry safety standards. A Second International Torremolinos Convention for the Safety of Fishing Vessels has just completed. It is my impression the United States delegation was successful in having their proposals adopted and that the international scene is ripe for ratification.

These things always take time, however, the content of this document is very comprehensive and apply to vessels over 79 ft. I can not understand why the Coast Guard is suggesting development of other regulations. As with implementation of other regulations, I would assume the conference standards would be fully adopted for new vessels, major rebuilt and selected portions phased in for existing vessels.

This is another very strong reason to defer other rule making.

In the mean-time, the effort should be: Education - Education - Education. The objective should be to actually reach 40-50% of the industry population. That would, I am very confident, change fatality statistics.

LICENSING

My remarks in this regard are brief. Some form of education credits for operators of fishing industry vessels under 200 GT is bound to enhance their practical experience.

One thing speaks very loudly: Loss of life is concentrated for vessels less than 150 ft. These vessels, with relatively few exceptions, are also less than 200 GT.

Mandatory education requirements with the specific goals of replacing many popular notions with facts and creating safety awareness should be a requisite to vessel operation.

The courses do not have to be long or complicated, but they should start and be tied to vessel operation either through a operator licensing system or vessel operating permit.

Thank you very much for the opportunity to present my views.

QUESTIONS FOR THE BOARD FROM CHAIRMAN BILLY TAUZIN FOR THE
COMMERCIAL FISHING VESSEL SAFETY HEARING JUNE 15, 1993

Chairman Tauzin: Does the Coast Guard plan to change the NVIC 5-86 so that it does not affect vessels under 79 ft.?

Mr. Green: Admiral Henn has indicated that NVIC 5-86 revision is in order, but I know of no other action. I had raised the question of NVIC 5-86 and it's de-facto legal status in a letter to the Coast Guard in July 1991.

Coast Guard representatives regularly state that the industry ignored NVIC 5-86. I don't know what their expectations were, but certainly they should not have expected everyone to run out and rebuild their vessel. From 1986 to the present there was no fishing vessel building boom that would have incorporated all of their wishes. In the NW fisheries the conversion activity produced many vessels which far exceed the NVIC because many owners chose to convert under classification society review.

There are useful parts to NVIC 5-86, especially Chapter 2 and 8 which unravel regulations related to navigation/communicating equipment and pollution. The problem is NVICs really are not kept up to date very well. NVIC 5-86 should be scrubbed clean of de-facto regulations to become only an informational document.

We now have the Fishing Vessel Regulations in 46 CFR Part 28 which includes basic safety requirements. Those regulations should not be augmented by de-facto regulations in a NVIC.

Chairman Tauzin: How would you address watertight integrity for existing vessels under 79 ft. and for wooden vessels?

Mr. Green: First I focus on establishing a watertight envelope. With all doors, hatches, etc. closed the vessel would in fact be tight. Then, in recognition of the fact a tight vessel cannot really load and store fish, I would look to typical details necessary to permit efficient fishing, but restrict risks of inadvertent flooding.

With this general approach, the next step is to examine the full range of vessel characteristics and fisheries requirements for vessels less than 79 ft. "Make it tight but usable" would generally apply down to 40 or 50 ft. Below that, open cockpit boats or others probably outnumber the decked vessels and deserve alternative attention.

Wooden vessels do not present any unique problem for having a door, hatch or other closure with a seal which will readily exclude water. There are fewer craftsmen in the wood trades, but the overall ingenuity and adaptability of the American fisherman and boatyard worker is alive and well - wood construction is not a real problem.

In the main, what should be done for watertight integrity is adopt the principals of watertightness and included in loadline regulations.

I do not have all the answers. I am familiar with most NW and Alaskan designs and have some recollection of some Gulf shrimpers and some New England trawlers and lobster boats. I am convinced, however, that a small group (3-5) of Naval Architects representing West, East, and Gulf coasts and one Coast Guard officer could merge reality and technical goals that could enhance fishing vessel safety. Most of all I believe the result would also be readable.

I emphasize, there is no single sentence answer to watertight integrity that is applicable to all vessels less than 79 ft. That has been a major problem with the Coast Guard proposed and final rule regulations - they want one requirement statement to apply to the full range of vessel sizes from a row boat to the largest factory ship. Requirements should apply to a specific range of vessels.

Chairman Tausin: There have been several comments on the stability rules and the confusion and fear of compliance that exists. What type of stability program could marine engineers or naval architects support that addresses their liability concerns and the high costs to fishermen to comply?

Mr. Green: The last set of proposed rules relative to stability were a complete disaster because no-one could determine exactly what was proposed. Specifically:

- * The proposed rules were not based upon the text of prior final rules and final rule amendments.
- * For vessels under 79 ft. the proposed regulation text and the explanation of its meaning were contradictory. The actual requirements being proposed were ambiguous at best and extremely severe at worst.

That was part of the problem. The rest of the problem is there is no widely accepted stability standard anywhere in the world for smaller vessels (less than 79 ft.). The Coast Guard wants owners and naval architects to sign off on documents attesting to stability regardless of vessel size and age.

What can we support?

- * Vessels over 79 ft. - The 46 CFR Part 28 regulations for new and reconstructed (major conversion) vessels and a process for managing existing vessels are generally satisfactory.
- * New vessels 50 to 79 ft. - The regulations as to stability standards proposed in 1992 are generally satisfactory.
- * Existing vessels 50 to 79 ft. - Require engineering consultation relative to any vessel alteration, equipment or gear changes to verify the changes will not degrade prevailing stability characteristics. [This should be done in a short, sweet requirement and not be embellished with an implied standard or need for elaborate calculations.]
- * Vessels 50 to 30 ft. - Do not promulgate any specific stability regulation for new or existing vessels. There is no supporting technology. The obvious hazard to these vessels is being overwhelmed by the sea. Operator competence and experience is the most significant element for safety of these vessels.
- * All unloading vessels greater than 30 ft. - Establish requirements for watertight integrity based upon review of vessels, fisheries and regional considerations.
- * Vessels below 30 ft. - Do not include in stability or watertight integrity regulations.
- * Cancel NVIC 5-86 and do not impose Letters of Attestation requirements which create de-facto standards, confusion and useless expenses.

Chairman Tauzin: What are your views about the Advisory Committee recommending a 2-tiered inspection program over the Coast Guard's 3-tiered program?

Mr. Green: I disagree with both the 2 tier and 3 tier inspection program because both include generation of "Coast Guard" regulations and Coast Guard inspection. I believe a check list with third party oversight for all unclassified vessels would be adequate.

First of all the Coast Guard has never in modern times written regulations which are readable. Second, if today, existing inspected vessel regulations could be miraculously instituted on all of the larger vessels, there is absolutely zero evidence to indicate the industry fatality rate would change. Injuries would be much more related to industrial hazards so again it is unlikely Coast Guard inspection would affect statistics.

I believe the Coast Guard views the larger vessels as an area of their expertise. That is true to an extent, but the real object of safety efforts is to modify statistics. A Coast Guard inspection program will take 15-20 years to implement unless a law is passed requiring vessels to be modified to meet these upgraded Coast Guard regulations. And still the cause of fatalities has not been addressed.

I believe the way to solve a problem is to attack the vital elements. Drowning is the major problem in the NW and Alaska. There are contributing elements to all vessel sinkings. Why not a thorough analysis of these contributing elements and development of 30-40 minute videos and a parallel development of 30-40 minute safety lesson plans.

This could be presented far and wide at frequently scheduled times and a law requiring vessel masters to attend 4 hour safety seminars could provide an audience. The video should properly vary for vessel size and regions.

Would it work? I believe it would and its affect could show up early. The object is to achieve some safety contact time. I believe even brief confrontation of operators with specifics of disastrous experience of others would become both accepted and appreciated and lead to safer operators.

**SUBCOMMITTEE ON FISHERIES MANAGEMENT
QUESTIONS FOR THE FISHING VESSEL SAFETY HEARING
JUNE 15, 1993**

Question for Panel: Do you feel safety will be enhanced if the proposed requirements are implemented?

Mr. Green: By proposed requirements, I assume it is relative to the proposed inspection and alteration of licensing requirements.

First of all, I view safety as the relative risk to damaging people or property. To enhance safety a process must alter historical statistics.

I do not believe the proposed inspection program will significantly alter present statistics. The greatest impact from any inspection will be the simple initiation of a regularly scheduled visit to each vessel by someone who will look at something. Thus a third party inspection to a check-off list of safety hazards would work for all unclassified vessels.

A change in licensing requirements has a chance at altering statistics. I am not convinced, however, that licensing is a total answer. Training is a better objective.

If I were given the prerogative to impose regulations with bodily injury threatening demand that statistics be altered I would do the following in the indicated order:

- * Establish some quota system to ease the pressure to fish virtually without regard to weather.
- * Institute mandatory training seminar for the master of every vessel under 200 GRT. The program would be based upon a combination casualty related detail and vessel safety fundamentals using video and handouts. Attendance at one 4 hour sessions each year would be mandatory.
- * Institute a safety check-off list inspection system using third party inspectors (ABS, DnV, etc. ...).

Question for Panel: Will insurance rates be affected by these safety programs?

Mr. Green: I do not know.

Question for Panel: Do you have any suggestions to improve safety in the fishing industry as a whole?

Mr. Green: First of all, we need better statistics to enable clear definition of either improving or declining safety trends. Lost lives are counted, but the facts of details that initiate the accident are poorly reported. Statistics of injury accidents are generally poor. Improving data collection and analysis is a very difficult task because the industry is so diverse.

For impact on statistics I believe the three items I outlined previously would produce results. Interestingly enough, the first and second item would definitely be the most effective, but they would also be the most controversial. The last item would not impact statistics particularly but it would be the easiest.

In the status quo there will not be improved safety. In the status quo with more impersonal Coast Guard regulations

relative to vessel construction there will be no meaningful improvement in safety.

There are two federal agencies who want to get at the fishing industry: The Coast Guard and OSHA. They are like two grandmothers arguing over who will hold a crying baby.

Neither is really well informed as to safety issues in the fishing industry. With the ongoing bickering over the significance of Memorandums of Understanding the industry is left hanging. It would seem inevitable that OSHA cannot be excluded from processing factories. These two agencies should be locked in a room until an agreement is reached of how they will split the pie and lock arms to jointly consider safety.

I for one like the OSHA approach to safety which includes published standards for common items and abatement of hazards as they are identified. This is far superior to the inflexible and centrally administered material regulations of the Coast Guard.

Summarizing:

- Coast Guard and OSHA should be directed to define their areas and work together, otherwise the courts will be solving the problem to no ones advantage.
- Do not promulgate any more regulations until present regulations have time to take affect: in particular the existing training requirements.
- Develop a better accident data system.

Question for Panel: Mr. Adler referred to his belief that pleasure boat operators are in need of safety training more so than fishing vessel operators. What problems do fishermen experience related to pleasure boaters?

Mr. Green: In general I concur pleasure boat operators could use more safety training.

Question for Panel: Do you agree with the Coast Guard inspection proposal? Would it increase safety and therefore decrease insurance rates?

Mr. Green: I do not agree with the Coast Guard inspection proposal. First and foremost it is not directed toward impacting vessel loss statistics. In my other replies I have addressed this question, but I believe an annual safety check-off list inspection by a third party for all unclassified vessels is the maximum that should be considered.

I assume insurance rates will only improve when there is an improvement in loss statistics that correlate to an identifiable safety program. The proposed Coast Guard inspection is scattered regulations which do not focus on costly loss statistics.

Question for Panel: Are the insurance rates for individual quota fisheries, such as the surf clam fishery, lower than those fishing activities which you referred to as Olympic style fisheries?

Mr. Green: I don't know.

Question for Panel: What do you think can be done to improve safety in the fishing industry?

- Mr. Green:**
1. Promote safety training in general.
 2. Institute mandatory high intensity 4 hour safety seminars for vessel operators. Variation for geographical areas and vessel size should be considered.
 3. Consider some quota system to moderate the economic pressures to operate in extreme weather.

Question for Panel: Do any witnesses agree with Mr. Adler that we need individual fishing quotas to significantly improve fishing safety?

Mr. Green: Logically a quota system should moderate many of the economic pressures to fish in all conditions. My expectation would be that this would apply most to the smaller vessels (less than 79 ft.).



Texas Shrimp Association

P.O. Box 1020 • 126 West Cleveland • Aransas Pass, Texas 78336
Telephone (512) 758-5024 • FAX (512) 758-5853

TESTIMONY OF
WILMA ANDERSON, TEXAS SHRIMP ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON COAST GUARD
June 15, 1993

Mr. Chairman and Members of the Subcommittee:

My name is Wilma Anderson. I am the Executive Director of the Texas Shrimp Association (TSA), and I am also an owner of three (3) 75' LOA steel shrimp trawlers that operate in the Gulf of Mexico.

We appreciate the opportunity to testify on the Oversight Hearing on the Implementation of the Commercial Fishing Industry Vessel Safety Act of 1988. The Supplemental Notice of Proposed Rulemaking on the vessel stability requirements published October 27, 1992, and the recent licensing and inspection plans submitted by the Department of Transportation to Congress.

The association represents the majority of Texas offshore shrimp trawlers (673) engaged in commercial shrimping in the Gulf of Mexico. The majority of the trawlers represented range from 72' - 79' LOA, under 100 gross ton, operate with a normal crew of three (3) and their operation extends beyond the noted Boundary Line (over 50 miles). Our members and crewmembers have a great concern of the financial impact that the regulations will impose, along

with the loss in fishing time that will be incurred, in order, for the owners and the crewmembers to adhere to the regulations.

Commercial Fishing Industry Vessel Safety Act of 1988:

The Act requires that in the regulations the Coast Guard -

(1) Consider the specialized nature and economics of the operations and the character, design, and construction of commercial fishing industry vessels; and (2) Not require the alteration of a vessel or associated equipment that was constructed or manufactured before the effective date of the regulations....

Shrimp Industry View:

The shrimp industry views the regulations as over ambiguous of the intent of the Act. The Coast Guard and Advisory Committee that has formulated the past/present and proposed regulations appear to have excluded the concept of Section (1) and (2) of the Act for the various fisheries and the vessel construction that encompasses the fisheries. The shrimp fishery feels, that Coast Guard has extensive knowledge of the gulf trawlers from the daily boardings in the Gulf of Mexico to have provided expertise to the Advisory Committee; that the gulf trawlers are extremely well constructed, fitted with navigation and safety features and of the trawlers' seaworthiness.

It also appears, that the Coast Guard and Advisory Committee tend to propose regulations to a point and then at another point continue to expand on those regulations that requires continuous rulemaking.

As one reads through the regulations, there is a feeling, that Coast Guard and Advisory Committee tend to purport that the

fisheries is a breed of wild mavericks, therefore, control by regulation must dictate. Even though, vessel owners with years of commercial fishing experience, business expertise with investment range of 250,000 and up into the millions would be so negligible to send those investments to sea without proper maintenance, navigation and safety/survival equipment, unconcerned about their return to port, is inconceivable, but yet indicated. The crewmembers with up to 40 years of sea duty, who have experience in distress emergencies at one time or another, now appear to not have the ability to carry out future emergencies.

Under the regulations industry must now be regulated, educated and schooled from outside sector of "special interest" instructors in monthly drills, in seven steps to survival, damage control and fire fighting, emergency communications, care and use of safety equipment, distress signals, sea survival, hypothermia and cold water near drowning.

Surveyors will use these regulations to the utmost, and industry will incur the additional cost from the tendency to over survey. Stringent recommendations will be issued, all in the pretense of regulations, which will involve costly repairs and down time. It also will require a return for the surveyor to inspect and sign off that recommendations have been complied with, and vessel is in order.

About the only thing that has been missed in the proposed regulations by the Coast Guard and Advisory Committee is to require an instructor, someone who can give monthly instructions to the owner on how to write the ABC's and fill out the records to be

retained on board for inspection by Coast Guard upon boarding the vessel, that the vessel is in compliance with the regulations.

To attempt to encompass every fishing vessel, vessel owner and crewmember under a standardized regulations is unreal. Such as the shrimp and reef fisheries in the Gulf of Mexico with a mild climate and warm water temperatures, different hull design and manned by a crew of three (3) can not be compared to other fisheries in the northwest and northeast with severe climate and cold water temperatures, different hull design and manned by a larger number of crew and fishing operations totally different.

Therefore, we recommend to the Subcommittee to place a hold on the entire fishery regulations and allow the fishery associations to fully decipher and comprehend the extent of the regulations, as they now apply and the full cost effects on each particular fishery. Allow the fisheries to submit a complexity scope of their fishery, vessel design and construction (wood, fiberglass or steel), region and boundary line of operation, applied safety, navigation, and operational standards. The fishery reports should be submitted directly to the Merchant Marine & Fisheries Subcommittee of Coast Guard by a stated date for review and Subcommittee revision recommendations to the present and proposed regulations that has been issued by the Coast Guard and the Advisory Committee.

Individual fishery outlines would void the tendency to over regulate a fishery through use of the standardized regulations, and would be more within the guidelines of Section (1) and (2), as the

Act stipulates, while reducing unnecessary extensive cost to the fisheries.

Licensing:

The shrimp industry is opposed to the Captain licensing proposal. We feel this would be an obstacle for those, who are solely dependent upon fisheries as their specialized livelihood trade. In fishery and vessel operations, they are far above the highly educated in job performance and sea duty, but would have difficulty in passing a comprehensive written exam.

Vessel Inspection:

The shrimp industry feels, that maintenance of the vessel is constantly ongoing when vessel is dockside and the Captain furnishes a work list each time the vessel arrives from the fishing grounds, also owner double checks all equipment and the vessel before departure to the fishing grounds. We feel, the submission of a written inspection report is unwarranted.

Industry Response:

The attached oversight response summary to the regulations pertains only to the Gulf region. This region has two (2) main commercial fisheries of shrimp and reef fish. The vessels are all similar in "V" design and all species are stowed below deck in a midsection partitioned fish hold. The response is strictly on behalf of the Texas Shrimp Association on the final rule and supplemental proposed rule.

Summary of Industry Financial Condition:

Mr. Chairman and members of this Subcommittee, at this time, we feel the regulations within the final rule and the supplemental

proposed rule are far too stringent and will demand an extensive financial cost to the shrimp fishery. The fishery is already financially stressed from the TED regulations, inflation, along with suppressed product price from market flooding of uncompetitive imports. Financially the shrimp fishery cannot adhere to these regulations.

We are to the financial point in the Gulf, that the shrimp fishery requests to be advised, is it the intent of the bureaucracy to put the most valuable fishery out of business by over regulating, if so, let us know now. Let's not put off the inevitable and allow businesses to borrow more money they cannot repay, on the assumption it will get better. Let the hundreds of thousands of families dependent upon the fisheries the opportunity to adjust and obtain another source of income.

Thank you Mr. Chairman and members of this Subcommittee.

**Shrimp Industry Oversight Summary Response of the Regulations
Gulf of Mexico Region**

Background and Purposes - Casualties and Injuries:

We agree: The Act requires the reporting of casualties to commercial fishing industry vessels by insurers, reporting of injuries by seaman on board commercial fishing industry vessels, and collection of casualty information by the Secretary.

We suggest, that the insurer's report should stipulate the type of injury, if it was a court awarded settlement, or an insurer's disbursement to avoid court action.

Background and Purposes -Navigation and Safety Equipment:

The Act calls for regulations concerning the following equipment:

We agree with some of the required equipment and disagree with other equipment requirements: 1. For all vessels. The regulations developed for this class of vessels should concern:

(a) Fire extinguishing equipment. Standard safety measure from date of construction.

(b) Life preservers. Standard safety measure from date of construction.

(c) Backfire flame arrestors for gasoline engines. N/A - offshore shrimp trawlers in the Gulf of Mexico are diesel propulsion.

(d) Ventilation of enclosed spaces. Standard design in the construction of the vessels.

(e) Visual distress signals. Standard safety measure from date of construction.

(f) Buoyant apparatus. Standard safety measure from date of construction.

(g) Alerting and locating equipment including emergency position indicating radio beacons (EPIRBs). This was not a standard measure. Industry has incorporated into vessel operation.

(h) Placards informing seamen of the duty to report injuries. This is a plus feature that industry agrees with, this will eliminate the fraudulent claims of injury notification at a later date when a suit is filed and crew witness is unavailable. This will be a savings to the industry and the insurer, before the Jones Act allowed too much time span in crew injury reporting to the vessel owner.

2. For vessels which are documented and operate beyond the Boundary lines described in 46 CFR part 7 or are documented and operate with more than 16 individuals on board. The regulations developed for this class of vessels should also concern:

(a) Alerting and locating equipment including EPIRBs. Is there additional equipment required in addition to the EPIRBs?

(b) Lifeboats or liferafts. Oppose - Note Survival Craft

(c) An immersion suit for each individual on board. Oppose - the shrimp industry recommends to be exempted, because of the mild climate and warm water temperatures in the Gulf of Mexico. This would be an ever ending expense, as suits would deteriorate from lack of use and storage over a period of time, but would require periodic replacements from deterioration.

(d) Radio communication equipment. SSB, CB's and VHF's are standard navigation equipment from the date of construction.

(e) Navigation equipment including compasses, radar reflectors, nautical charts and anchors. Standard navigation equipment from date of construction.

(f) First aid equipment. Standard safety measure from date of construction.

(g) Any other equipment required to minimize the risk of injury. This is vague, but one would assume this would refer to flywheel covers on the main propulsion, drum hoist covers, non-skid deck paint, escape ladders, etc. Standard safety factors from date of construction.

Section 28.65 - Termination of Unsafe Operations:

We are unclear as to what portion of this section would apply to the shrimp industry, therefore, we do not fully disagree with this section, but industry requests a more indepth clarity on "hazardous condition" terminology, that would require the Suspension and Revocation action against Coast Guard issued licenses for the shrimp fishery.

Section 28.120 - Survival Craft:

The shrimp industry opposes and will request an exemption from the required survival craft for vessels outside the Boundary Line. Industry contends that the present six (6) man life float apparatus with reflector tape, that has been in use for several years and more than accommodates a crew of three (3), is correctly sized to be stowed to avoid damage on top of the wheelhouse or cabin and readily accessible and lite enough in weight for one (1) crewmember

to handle leaving the other two (2) crewmembers free to handle the current emergency on board.

We feel, this life float meets the safety requirements in the Gulf of Mexico, that sustains mild climate/weather and warm water temperatures. In addition, the close proximity of the other fishing vessels, numerous offshore supply vessels that frequent the fishing grounds and the extensive city of offshore drilling platforms, all aide and assist distressed crewmembers. The cost of the six (6) man life float per vessel is 925.00 in comparison to the liferaft with a Solas A pack that cost's over 4500.00 per vessel.

SUBPART E - Stability, severe wind and roll, load line, water on deck and intact righting energy.

As we view the final rule, we find a complete different rationale in the supplemental proposed rulemaking.

The Act addresses a major operational problem encountered by commercial fishing industry vessels by requiring regulations for operational stability. The Act states that those regulations are to apply to all vessels which are built, (does this mean new vessel built for delivery per the following dates or does this mean prior constructed vessels no matter what date of construction? This is unclear to industry.), or which are substantially altered in a manner that affects operation stability after December 31, 1989 (Final Rule states December 31, 1990).

The shrimp industry strongly objects and opposes the inclusion of vessels 79' and under to 50' with a normal crew of three (3) in the SNPRM, this totally represents the entire offshore trawlers in

the Gulf of Mexico. We feel, the inclusion of the vessels 79' feet and under to 50' is simply a regulatory measure directed at the shrimp fishery under the SNPRM of October 27, 1992.

Reference Page 48676 SNPRM: As previously stated, several comment letters responding to the NPRM suggested that those proposed rules were too stringent for commercial fishing vessels less than 79 feet in length. Of particular concern were the proposed requirements dealing with intact righting energy, water on deck and severe wind and roll. An ad hoc group calling themselves Naval Architects for Fishing Vessel Safety (NAFVS) pointed out that these requirements were developed for vessels greater than 79 feet in length, and that when applying some of these criteria to the vessels less than 79 feet in length, the result was redundancy and not necessarily increased safety.

Industry requests, that the Coast Guard be required to furnish this Subcommittee statistics on the gulf shrimp industry, the names of the vessels, vessel construction (wood, fiberglass or steel) and dates of incident of the vessels lost in the Gulf of Mexico, since 1973 - 1993, due to capsizing relating to the factors of stability, severe wind and roll, load line, water on deck, and intact righting energy. Coast Guard should document the need to warrant the inclusion of the shrimp trawlers 79' and under to 50' in the stability testing and certification requirements.

Industry advises, this will be extremely expensive to the vessel owner, when in reality, even if a vessel cannot meet the criteria, according to the Act there can be (2) "no required alteration of a vessel or associated equipment that was constructed

or manufactured before the effective date of the regulation". Upon what rationale is the basis for this regulation over and above the Act for industry to incur such an expense?

I was employed by RYSCO Shipyard for several years. It was one of the major shipyards on the Texas coast constructing over 600 gulf trawlers from construction designs approved by Naval Architect John Gilbert and Steve Yates, in addition, they also constructed offshore supply boats, ferry boats and floating barges.

Industry is now unable to turn to the shipyard of construction for stability certification or any other certification, as the shrimp fishery moved into over regulations and escalating operation cost, vessel construction ceased and the shipyard owners had no option but to close the yards.

This is one of the alarming factors, the industry must face under these proposed regulations is the accessibility for repairs under a stringent surveyor recommendation and/or vessel inspection. Section 28.275 - Acceptance Criteria for Instructors and Course Curricula:

Industry objects and opposes this section. Our crews are fully trained in their respective duties on board the trawler. The trawlers will spend more time returning to port for drills, then actual fishing time in the gulf.

This is redundancy, which creates outside special interest jobs, at the expense of the fisheries.

Section 28.505 - Vessel Owner's Responsibility:

Note the industry memorandum under Subpart E stability.



Massachusetts Lobstermen's Association, Inc.

8 OTIS PLACE, P.O. BOX 600
SCITUATE, MA 02066-0006

TEL. (617) 545-6984
FAX (617) 545-7837

**TESTIMONY
OF
WILLIAM A. ADLER
MASSACHUSETTS LOBSTERMEN'S ASSOCIATION**

**BEFORE THE
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION
AND FISHERY MANAGEMENT**

JUNE 15, 1993

Mr. Chairman and Members of the Sub-Committees:

My name is William A. Adler and I am the Executive Director of the Massachusetts Lobstermen's Association based in Scituate, Massachusetts. I am also a commercial lobster fishing vessel owner and operator and I have been an active inshore lobster fisherman for 30 years.

I would like to thank you for affording me the opportunity to comment on these proposed USCG Vessel Safety Regulations.

My comments today represent the feelings of not only the 1100 members of my Association, but also that of roughly 1200 members of the Maine Lobstermen's Association, as well as several smaller local lobster fishermen's associations in our region of the Northeast. In all, almost 3,000 inshore commercial lobster fishing vessel owners are commenting here.

I would further like to preface my remarks by saying that our type of operation frequently referred to as the "mosquito fleet", consists of vessels under 50 feet in length that operate within about 7 miles from shore with from a single person aboard, to as many as 3. We are day boats, that is we leave in the morning and return before dark. While gross earnings range widely, we are talking about an operation that on average grosses only 40-50 thousand dollars annually and has an operations cost ratio close to 50%. We do however, fall into the category being considered in these proposals because all of our vessels are documented or state registered.

IN GENERAL:

We find the explanations for the proposed rules on Stability, Inspections and Licensing as published, extremely confusing to read especially for the average fisherman. This is if he as had access to the proposals at all. The Federal Register is not on most people's must read list. Attempts to insert sections from that document into newsletters or fishery newspapers or even to try to translate what is said frequently results in even more confusion. As leaders of the fishing groups try to explain what all this means to each of these fishermen as small individual businessmen and their "boat", we find confusion, misunderstanding and in some cases disbelief that the big world of Washington, the Coast Guard and Big Ships may mean "Them". Some of their other comments also are not printable here.

We feel that all three of these proposals, as well as some of the previously implemented safety requirements are unnecessary for our size operation and range. Even the report submitted to Congress on the Inspection issue indicates that the annual fatality rate for vessels in our class is "relatively low", especially considering the total number of vessels involved. We do not believe that implementation of any of the proposals being considered today will result in any noticeable saving of lives and in fact will be a case of overkill in the name of vessel safety. While we understand that all the proposals are well intended and that the Coast Guard and the Vessel Safety Committee are working very hard to improve safety on the sea, we feel that, particularly on these issues, the small boat fleet will be sunk in a sea of vessel safety.

STABILITY

We strongly oppose any stability requirements such as has been proposed for vessels under 50 feet whether they are current or future vessels. If it is the intent by the drafters of this section to exclude or grandfather these vessels in some form, it has not been defined clearly enough.

If there is to be a requirement that existing vessels under 50 feet obtain "stability instructions from a qualified person", we could be talking about a very complicated scenario involving a large number of vessels and an equally complicated and vague definition lying behind the terms. Who is the qualified person? What instructions? What are the guidelines to be used with respect to what effects stability on the more than 100,000 vessels under 50 feet that may be involved here? What would be the cost to the fishermen and how often must he pay? What constitutes a change in the vessel's stability? How would the fishermen and the Coast Guard keep up with all this? Minor changes are made on many of these boats on a regular basis. Equipment is added or removed. Lobster traps are loaded and unloaded. None of these day to day activities effect the stability along the lines we here are thinking about but who makes that determination? Remembering the cost factor again, any item or service that results in a cost exceeding, let's say \$500, becomes a major expense for these size operations.

Most new vessels built for this size fishery fleet are production models. These vessels once produced are then modified for the particular fisherman and his operation. Who decides which individual modification done wherever or whenever on this new vessel has affected its stability? As a rule, none of these types of modifications do actually affect the stability to a degree where these vessels are in danger. Imposing drastic changes in the name of Stability upon the builders for their production model-basic hull may result in the need to reconstruct their molds in the case of fiberglass hulls for example, and this will drive up the price to would be buyers; all unnecessarily. This would result in fishermen having to pay more for a new boat. It could also drive these established builders out of business due to the lack of sales if retooling costs drove prices too high. The current breed of inshore vessels being produced are good sea-worthy boats and the purchase of a new model should, if anything, be encouraged not only for safety reasons but for the general business climate.

We do not believe that safety at sea will suffer if the proposed requirements on stability for vessels under 50 feet is eliminated completely from the proposal and we urge that this action be taken.

INSPECTIONS

We believe that the proposal to have self-examinations for vessels under 50 feet is reasonable although unnecessary. Upon examination of the proposal, it appears to saddle the Coast Guard with an inordinate amount of paperwork, costs and a waste of valuable manpower time for something that is unlikely to result in better safety at sea. The proposal to audit 25% of the reports received each year could amount to 25,000 audits based on the Coast Guard report that there are over 100,000 vessels in this category. Is this strain on the Coast Guard's manpower and the U.S. Treasury really needed? If this proposal replaced the random at sea boarding inspections which take place now and cause disruption of valuable fishing time, (up to 2 hours sometimes for an under 50 foot vessel), this proposal would have merit. We don't think this will be the case however and so we question the value of this measure.

We do however feel that the self-examination checklist for our size vessels is preferable to other options proposed and could be incorporated as part of the yearly renewal of one's documentation or state registration. This would provide a staggered return of forms and be less confusing for the fishermen as well. As for the Coast Guard's paperwork, expense and auditing, this could become one of the Coast Guard's worse nightmares.

LICENSING

We oppose this proposal for our many inshore day-boat operators because we do not believe it will improve safety at sea to any noticeable degree. Although it is not within the scope of this Act, we find that fellow boaters in the pleasure boat category with whom we must co-exist in our range of operation, are frequently much more in need of this idea than are we. But that's another story!

No test, screening or certification can take the place of the knowledge learned by fishermen as they live and work on the sea. Experience will remain the best teacher. Many of our fishermen although they know how to operate a vessel safely, are not fluent in English and may not be skilled in passing tests in a classroom. Requiring courses and tests by shoreside firms for which a fisherman must pay will benefit only that firm. Requiring fees and renewals every five years will only heighten the costs to fishermen and paperwork to the government with little to no safety benefit. Many of our operators work alone and it is difficult to have CPR or evacuation drills with your only "mate" which may be a seagull.

We would recommend that this proposal be shelved at this time in the interest of maintaining some sanity on the ocean.

TO CONCLUDE

Beyond this testimony on the issues of Stability, Inspections and Licensing, we have included a copy of a letter previously sent to the Marine Safety Council relating to the Buoyant Apparatus proposal. This was another vessel safety issue discussed in the October 27, 1992 Federal Register.

We would like to say sincerely at this time, that the men and women of the United States Coast Guard have been doing an outstanding job for this country and its fishermen in saving lives and we greatly appreciate their tireless efforts. We also encourage your continued support for their activities.

With regard to the Commercial Fishing Vessel Safety Act and its admirable intentions, we feel that the measures that have already been taken, are sufficient for now and should be given a chance to work. Let's not overdo it to the point where we sink our fishermen with regulations and requirements while trying to save them.

Once again, Mr. Chairman and Members of the Sub-Committee, we thank you for the opportunity to comment on these proposals.


Massachusetts Lobstermen's Association, Inc.

8 OTIS PLACE, P.O. BOX 600
SCITUATE, MA 02066-0006

TEL. (617) 545-6084
FAX (617) 545-7837

December 9, 1992

Executive Secretary
Marine Safety Council
(G-LRA-2/3406) (CGD 88-079a)
U.S. Coast Guard Headquarters
2100 Second Street S.W.
Washington, DC 20593-0001

Re: Proposed Buoyant Apparatus Requirement

Dear Executive Secretary:

We were very disappointed to learn that the USCG and the Vessel Safety Committee are again insistent on revisiting the survival craft issue with regards to day boats operating inside 12 miles.

The 1100 member Massachusetts Lobstermen's Association wishes to register its opposition to any attempt to require buoyant apparatuses, either inflatable or otherwise on the small inshore day boat fleet. We would like to submit the following comments and observations with regards to the proposal.

A. Looking first at the type of operation that is involved in this issue, we are referring to vessels under 50 feet that operate within 12 miles and some who even stay inside the Boundary and Territorial Lines as well. These vessels return to port each day and are manned by a single operator or perhaps a total including the captain, of up to 3 people.

B. As we have mentioned in earlier correspondence, we operate in a high density situation where there are other boats in the same area available to assist anyone with a problem. Additionally, this group also has the advantage of being able to return to port relatively quickly should bad weather set in. Many are also

able to shift their fishing activity, should the weather deteriorate, to areas that are on the leeward side of land. Since these fishermen keep in close radio contact with their fellow fishermen, communication is good and quick rescues, if necessary, are common. The existing requirements that include a radio, life ring and life vests, remain and will continue to remain the best avenue for success should a rescue of fishermen from these types of vessels become necessary.

C. We disagree with your comments and judgment printed in the Federal register regarding these inshore day boat risks (Fed. Reg. Vol 57 No 208, Oct. 27, 92, p.48674, Col. 1 and 2). In your argument you have cited what could be admittedly a possible situation where worsening weather conditions could diminish the ability of day boat operators from relying on each other. While the closeness of other boats may be diminished, it doesn't necessarily take away that advantage completely, it doesn't diminish a quick return to port or leeward fishing opportunity, nor does it take away the ability of the current safety equipment on board a stricken craft from being used. Given the way incidents of sinking, capsizes or someone overboard occur in the real world, the addition of the proposed buoyant apparatuses, particularly the inflatable version will most likely go unused. It would therefore not noticeably improve the situation you've described in the notice. Things just happen too quickly. If you are trying to accommodate all possible situations, perhaps you should consider keeping all fishing boats in their harbors. Someone however would probably still manage to fall off the tied up vessel even in port.

D. Examining the types of accidents that occur within twelve miles and probably outside as well, there are four mishaps that make up 99% of the problems.

- 1) A quick accident that happens in minutes: the vessel goes from normal operation to sinking, etc. very quickly. There is no time to get to inflatable anythings or even survival suits.
- 2) A time-delayed accident where those aboard attempt to save the vessel rather than abandoning it in an orderly fashion: this is a very common practice since in most cases, the owner is the operator and no one wants to lose his boat. A radio call may go out but then the effort is on saving the vessel. When in some cases the efforts fail and there is a realization that the vessel is lost, the abandoning comes too quickly to use any type inflatable or even a suit. Remember this is the "real" world here.
- 3) A slow sinking accident: This type of mishap may afford ample time to limp back to port or beach the craft, and certainly allow time to call another vessel or even the Coast Guard in time to receive the assistance needed. This would allow time to activate the buoyant

apparatuses but obviously saving the boat or if that finally fails, transferring directly to the waiting boat, which had been called, would be preferable to using the rafts.

- 4) The man overboard accident: In this case the vessel is not in danger, it is just the person who left the boat at the wrong time who needs the help. Should this be a one man operation, who would throw out the saving device? If this should occur with someone still on the boat, the vessel itself can perform the rescue. The present life ring requirement here is quick and available for use. There is no need for launching all the "lifeboats". The buoyant apparatuses clearly are not needed here.

E. Upon studying some of the available statistics on the subject of accidents and safety equipment, the following conclusion can be made:

- 1) Most deaths inside 12 miles for fishing vessels are caused as a result of quick or time delayed accidents. The latter being where the captain alone or with a crew, tried to save the vessel. Neither inflatables nor survival suits were very effective in these situations.
- 2) Most deaths involved drowning and many of them involved going overboard quickly. As mentioned earlier, if alone, no raft apparatus would have helped. If not alone, quick action by the vessel operator and use of the life ring might have prevented the tragedy. Once again, survival craft would not be needed.
- 3) In the cases of sinkings or capsizing, most of the fishermen who had inflatables aboard were not able to use them when their vessels got into trouble. The USCG is aware of the low percentage of effectiveness of the inflatables.
- 4) Most fishermen that are rescued are saved by other fishermen rather than by the Coast Guard. As mentioned above; this is probably due to good communications and the closeness of other fishing vessels. (The high density fishery concept does work.)

F. These small under 50 foot inshore lobster fishing day boats are somewhat limited in appropriate storage space topside and the addition of this requirement will only relegate the survival craft to some out of the way post where it will likely serve as a perch for the gulls. Lobster fishing vessels return to port at the end of each day. It would be foolish to leave an expensive survival craft, inflatable or otherwise, out for the taking each evening and therefore fishermen will try to stow it below if possible each night and bring it back out each morning. How long do you think this exercise will continue? Eventually this piece

of equipment will be permanently banished to either the cabin or the seagull perch and affixed so securely in one place for theft prevention that no one will ever be able to access it. This is the reality of what will happen. What good is the equipment, if you can't get to it when you need it quickly?

The buoyant apparatus requirement as proposed, we feel, is better in theory than it will ever be in reality.

G. The cost of these items is no small problem for our fishermen. Any further expense over what they have already incurred is just too much. Any item that costs over several hundred dollars and particularly one that has such limited possible advantages is just not worth it. As one of our fishermen suggested;

"If they want us to have all this high priced stuff, let them pay for it and supply us with all this junk. If they had to pay, you'd see that list shrink mighty fast."

Other comments on the issue are not printable here!

Please remember that upon looking at an inshore day boat's gross revenues and understanding that it varies and this is an average, if a full-time operation grosses 40 to 50 thousand dollars annually and already has an average 50% operating ratio, there isn't much left for take home pay. Increasing costs for an item that probably will never be used and is redundant, given the safety equipment already on board, is just too much of a financial burden for these small operations. Remember also lobster fishermen as well as most fishermen, are not able to pass increased costs on to the consumer. They still get for their product what the buyer will give them.

H We also find your vessel length and registry classifications to be not consistent with the "real" world of fishing, particularly as it pertains to vessel safety equipment. All of these boats up to approximately 45 feet are inshore day boat type sizes. They should therefore be together. We fail to see why a 40 foot inshore boat whose fishing world is inside one or all of the designated lines for example, should be expected to have additional safety items when in fact, it may be a safer vessel while operating in rough seas than a smaller boat.

Using the 12 mile line as a determinant for safety equipment, would be more realistic than using a 36 foot size or a documentation paper versus a state registered permit.

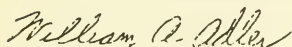
I. We must again emphasize that for these inshore day boats, the present safety equipment roster particularly the radio, represents the best practical equipment that will result in the greatest saving of lives possible.

J. After studying this proposal, it is our feeling that we must request the following:

- 1) Drop the proposal to require inflatable buoyant apparatuses for documented vessels over 36 feet operating inside 12 miles.
- 2) Drop the proposal to require buoyant apparatuses for documented vessels under 36 feet and State registered fishing vessels operating inside 12 miles.
- 3) Schedule a series of public hearings on this issue unless you decide to drop this proposal.

Please, enough is enough, at least for now. We understand your intentions to save as many fishermen as possible and that goal is admirable. This proposal however, as well as several others that have been implemented or remain in the "pipe line", are increasingly becoming a case of your sinking these small fishermen in a sea of vessel safety. (Pun intended.)

Very truly yours,



William A. Adler
Executive Director

WAA/ams

cc: Commander Ashdown
Commander Tim Skuby
Lieutenant Ralph L. Hetzel
Congressman Gerry E. Studds
Senator Edward M. Kennedy
Senator John F. Kerry
Senator George Mitchell



Massachusetts Lobstermen's Association, Inc.
 8 OTIS PLACE, P.O. BOX 600
 SCITUATE, MA 02066-0006
 TEL (617) 545-6984
 FAX (617) 545-7837

July 28, 1993

Ms. Catherine Tucker, Clerk
 USCG and Navigation Subcommittee
 U.S. House of Representatives
 Committee on Merchant Marine and Fisheries
 Room H2-541
 Longworth House Office Building
 Washington, DC 20515-6230

Re: Questions for the Record from Congressman Billy Tauzin, Chairman

Submitted by: William A. Adler

Mr. Adler

- 1Q) If you oppose what the Coast Guard is proposing on stability, licensing, and inspections, do you have any recommendations on what could be done to reduce the risks associated with commercial fishing. Would education be the answer ?
- 1A) The USCG Vessel Safety Committee have already implemented a series of regulations requiring certain safety equipment to be aboard vessels. Some of these new requirements are bound to reduce the risks but there has not been enough time yet to see if they have helped. The most valuable safety equipment for our size vessels (under 50 foot day-boats) is the VHF radio, life ring and life vests. It would be helpful for the USCG to produce a simplified pamphlet for every commercial fisherman to educate them on certain aspects of vessel safety. It might be helpful however, to design these pamphlets according to vessel size (up to 50', 50-80 and 80 up etc.). Education via a pamphlet approach would be at least as effective in reducing risks as the proposed stability, licensing and inspection proposals but with far less confusion, consternation and cost.

- 2Q) Are there specific fisheries that experience a greater number of accidents and loss of lives than others in the Atlantic or other waters ?
- 2A) We believe that fisheries that require vessels to spend days and nights at sea and require trips outside the site of land are far more at risk than fisheries that are conducted close to shore and with other vessels in the same fishery close by. The inshore lobster fishery is basically conducted inside 7 miles, operates with many other similar vessels nearby and cannot by law fish for lobsters after sunset.
- 3Q) Insurance has always been a concern of mine. Could you give me an estimate of how many vessels today are in operation without insurance ? Is this a decline ? What about 10 years ago ? What is the average cost to insure a fishing vessel ?
- 3A) To be perfectly honest, I have no idea how many vessels are without insurance. The average cost to insure a fishing vessel in our category under 50 foot, day-boat, inside 12 miles, varies with the age and construction of the vessel. I will offer the following averages for 3,000 or so vessels in our area:

Size range of inshore lobster fishing vessels- 18-45 feet

Construction material- wood or fiberglass 50/50 mix

Insured value range- \$5,000 - \$150,000

Average cost of yearly premium- \$1,500 - \$3,000 (includes Hull and P & I)

Questions for Panel:

- 1Q) Do you feel safety will be enhanced if the proposed requirements are implemented?
- 1A) No, I do not believe that there will be any noticeable enhancement of safety if the Stability, Licensing or Inspection proposals are implemented. Some of the previously implemented requirements may help- Let's give them a chance.
- 2Q) Will insurance rates be affected by these safety programs ?
- 2A) I doubt that there'll be any significant change in insurance rates with these programs. If a small decrease occurs, chances are it will not benefit fishermen because his cost to comply with Stability, Licensing and Inspection requirements will offset any savings. As is frequently the case, insurance companies may not raise their rate and will say "No, the rate didn't go down but because of this rule we didn't raise it as much as we would have!"
- 3Q) Do you have any suggestions to improve safety in the fishing industry as a whole ?
- 3A) These may help: radios and other communication devices in varying degrees depending on size, destination and fishing practice of the vessel, survival equipment ranging from vests and rings to life boats once again varying with size, destination and fishing practice of the vessel.
- Encourage purchases of new vessels to replace worn out ones.
- 4Q) Mr. Adler referred to his belief that pleasure boat operators are in need of safety training more so than fishing vessel operators. What problems do fishermen experience related to pleasure boaters ?
- 4A) We have found that with many, not all, but many of the operators of pleasure boats, there is a lack of common courtesy on the ocean and very little respect for the sea itself. Some common problems encountered in our area of New England:
- 1- Sailboats bearing down on us while we are stationary, hauling our traps- (See how close you can get.)
 - 2- Motor vessels at full speed with high wakes through the middle of lobster fishing vessels working. (Can we tip the traps off the rail and maybe the fishermen too.)
 - 3- Pleasure boats operating at speed through the fog and going out into rough seas. (For the thrill of it ?)
- 5Q) Do you agree with the Coast Guard inspection proposal ? Would it increase safety and therefore decrease insurance rates ?
- 5A) No, No and I doubt it.

6Q) Are the insurance rates for individual quota fisheries, such as the surf clam fishery, lower than those fishing activities which you referred to as Olympic style fisheries ?

6A) No Comment

7Q) What do you think can be done to improve safety in the fishing industry ?

7A) Please see #3

8Q) Do any witnesses agree with Mr. Adler that we need individual fishing quotas to significantly improve fishing safety ?

8A) I'm sorry, but I don't understand what is meant by this question. To my knowledge, I never mentioned Individual Fishing Quotas. As a management tool, I am not in favor of quotas at this time.

Enclosed please find our MLA cartoonist's impression on some of these issues.

WAA/ams
Enclosures

cc: Ms. Lori Rosa, Clerk
Fisheries Management Subcommittee
Room H2-513

WRITTEN TESTIMONY
OF
THOMAS WHITFIELD
OF
PETTIT-MORRY COMPANY, SEATTLE, WASHINGTON
SUBMITTED
TO
THE COMMITTEE ON MERCHANT MARINE AND FISHERIES
SUBCOMMITTEE ON COAST GUARD, NAVIGATION,
AND FISHERIES MANAGEMENT

ON 15 JUNE 1993

The current scene in larger fishing vessel liability insurance is nearing a crisis stage. Within the last 2 months, one of the three underwriting markets providing Protection & Indemnity coverage for crabbers, trawlers, factory trawlers, catcher/processors factory longliners has ceased writing new business and is often declining to offer renewal terms on business that they currently write. Reportedly the reason for this decision is threefold:

1. Quantum of Claims
 - A. The sheer number of claims that you regularly can count on in the course of business, and the addition of claims based on fraud are numbers too great to sustain business.
 - B. The judicial climate which consistently is very much in favor of the plaintiff and often handled as a means to provide a punitive statement to vessel owners by a judicial system stacked against them.
2. Fisheries regulation and management
 - A. The current status of fisheries management where openings for fisheries are set for specific dates and are not subject to change due to bad weather. The best example of this are the 24-hour halibut openings in Alaska. If a severe storm is underway during an opening, there is no means by which to reschedule the opening. Essentially, this can force fishermen, by economic pressures, to leave port in terrible weather in order to fish during the 24-hour opening. This can subject their crew to injury or death and their vessels to damage or total loss.
 - B. Olympic style fisheries where seasons are opened with a specific quota available. The fleet works at breakneck speed to harvest as much as possible for each catching vessel during the time the season is open. Vessels and crews are pressed to the breaking point - crewmembers often working 18 - 20 hour days during the peak of the seasons. The resulting claims are a sad legacy of the current fisheries management style. Crewmembers cannot be expected to work in dangerous conditions until they drop. The insurance companies cannot be expected to provide the safety net for the vessel owners in this type of working climate.
3. The cut-back in fisheries seasons.
 - A. Due to the efficiency of the catching vessels, the decline in fisheries stocks has made the economic pressure even greater to keep the vessels on station and at work. Maintenance and normal repairs are often done rapidly, by cutting corners to save time. These repairs are often put off or rescheduled for a more cost effective time when the season is closed, which can lead to problems later.

The cut back in fisheries seasons is very pronounced this year. Crabbers, factory trawlers, and factory freezer longliners have been operating for the past several years on schedules of 10 or 11 months of operating time each year. Now with fisheries management closures and quotas being met earlier, due to the Olympic style fisheries, these vessels are down to operating only 5 to 6 months a year. The pressure to produce in these shorter time periods is tremendous for both the vessel and the crewmembers.

- B. Along with the shorter seasons and more intense fishing pressure, it is a simple statistical fact that the number of claims will increase. The cost of these claims will also rise dramatically due to the costs of medical care, the remoteness of the area where the fishing takes place, the cost of evacuating injured personnel to a point where quality medical care is available. The cost of defending claims brought by crewmembers against the vessels they were injured on are also a factor and these costs are difficult to estimate.
- C. Not to be dismissed is the phenomenon of underwriters becoming an extension of the unemployment compensation system. The crewmembers have great economic pressures from home. If they can not earn what they did in past years, due to decreased fishing time, the possibility presents itself to file an insurance claim to ensure a steady income. An income that is not now available to the crewmember because of the lack of work.

Recently a number of lawsuits have been presented to underwriters by attorneys representing crewmembers who were injured several years ago for claims that had been dealt with, settled in full, and closed with a red line release signed by the crewmember claimant.

The Protection & Indemnity marketplace until recently was as follows:

1. North America Shipowners Insurance Services underwriting through Switzerland Insurance Australia Ltd.
2. Harlock, Williams, & Lemon, Ltd. underwriting through C.A.M.A.T.
3. Sphere Drake Insurance p.l.c., out of London.
4. Protection & Indemnity Clubs.

Currently the status is as follows.

1. North American Shipowners Insurance Services fishing vessel liability insurance is no longer an acceptable risk in which they wish to participate.

2. Harlock, Williams, Lemon, Ltd.
They are adjusting their rates upward, raising rates on average of 20% to 100% to cover their losses.
3. Sphere Drake Insurance and they have been in this market for 2 years and are going through a significant education process now. Rates are increasing 15% to 20% on business with a clean loss history and are often significantly higher for accounts with any past losses.
4. Protection & Indemnity Clubs and they have lost a great deal of business to Sphere Drake and the others and are having to adjust their premium rates upward to cover their anticipated losses.

The possible solution would include:

1. Have all fishing vessels inspected by USCG or certified surveyors representing the USCG, and put teeth into the inspections, recommendations, and follow up. Essentially, take the bad vessels out of the fleet, and/or stop them from operating until such time as they are safe to operate.
2. Implement a system of individual fishing quotas for the major fishing species, allowing vessels to operate on more realistic schedules, providing a higher degree of safety to the crew and the vessels. This would add the economic benefit of a more stable market for their catch.
3. Put teeth into the 7 day reporting requirement for injuries aboard vessels. Force the crew, the vessel managers and vessel operators to deal immediately with injuries, limiting the long term open door for claims to be filed. The current status of allowing 36 months from time of incident to either file suit or settle a claim is an open invitation for abuse.
4. Standardize the requirements and reporting formats for marine surveyors, to insure that a uniformed review is done on each vessel. Currently each surveyor views his work differently. The written reports they generate differ greatly in content, format and quality. We need to incorporate a USCG approved checklist into the survey reports, with a copy going to USCG, and to the insurance company providing the insurance coverage for the vessel.
5. Secondly, review the Jones Act and its interpretation in relation to fishing vessels. This landmark piece of legislation has been pushed and stretched until a virtually impossible legal climate exists for fishing vessel owners.
We should consider the implementation of a Workers' Compensation based system like the majority of fishing nations use, and under which the rest of American companies work.

The local insurance pools (which in formal terms are non-assessable reciprocals) provide a self-policing function, of and for their own vessel membership. All prospective new members are screened carefully. Their vessels are surveyed by the approved pool surveyor, then their application is voted on by the Board of Directors for each respective pool. Once approved as a member of a pool, it is very infrequent that a member is asked to leave. Claims within the pool are handled in the normal fashion, with pool-approved surveyors, who review the details of the claim including the reports of the accident, the damage reports and the estimates for repair. Once submitted to the pool, the Board of Directors approves or disapproves each claim on its individual merits.

The fishing vessel pools are selective in their membership and diligent in their claims handling to insure a fair shake for their membership. They are duty bound, as well, to run the pools with the net result of lowering insurance costs for their members. The greatest inducement then, to their membership, is a hoped for reduction in the eventual insurance costs.

The question should not be, - "What are underwriters doing to provide inducements or incentives to fishing vessel owners?" The question should be, - "Which underwriters will remain in the marketplace?"

Testimony of Peggy Barry
Vice-Chair, Commercial Fishing Industry
Vessel Advisory Committee

Testimony on Commercial Fishing Vessel Safety
Submitted for the record
of the Hearing
before the Subcommittees on Coast Guard and Navigation,
and Fisheries Management,
Committee on Merchant Marine and Fisheries
U.S. House of Representatives
June 15, 1993

Mr. Chairman: It is a long seven years since I first appeared before your Subcommittee and pled the case for legislative involvement in commercial fishing, the most dangerous job in America. The loss of our son Peter, aboard a 70-year-old, unseaworthy purse-seiner in Alaska, was still very recent, and we were, understandably, frustrated at what appeared to be the slow movement of the governmental wheels of progress. But even from my perspective, much has been accomplished since then. The passage of the Commercial Fishing Industry Vessel Safety Act of 1988 was the first major landmark: at last, a vessel could no longer go out for salmon in the treacherous waters of the Bering Sea without even the most minimal survival equipment. I am proud of the part my husband and I played in accomplishing this.

The subjects you are addressing here stem from requirements of that Act, and are the basis of the next important steps which must be taken.

LICENSING OF OPERATORS OF COMMERCIAL FISHING VESSELS:

The Act mandated a "plan for the licensing of operators of documented fishing, fish processing, and fish tender vessels." There is broad agreement among all those who are involved with marine safety that licensing will have a positive impact on the record of the industry. The Coast Guard and the Commercial Fishing Industry Vessel Advisory Committee, on which I have served since its inception, originally developed two different plans. The Coast Guard's was a fairly conventional plan, based on programs they had run in the past; the CFIVAC tried to design a plan which would be as industry-friendly as possible, based on hands-on training, and taking into consideration the unique and varied qualities of the population which the plan would affect most. A compromise plan was developed by a working group made up of members of

Barry testimony

- 2 -

the Committee and Coast Guard personnel. This plan has been studied in great detail by the CFIVAC, working with the Coast Guard, and is a reasonable, workable and responsible one. IT IS EXTREMELY IMPORTANT THAT THE MERCHANT MARINE AND FISHERIES COMMITTEE SUPPORT THE COAST GUARD IN ITS REQUEST FOR AUTHORITY TO LICENSE THESE FISHING VESSEL OPERATORS. The passage of the Marine Safety Act of 1993 would provide the Coast Guard with that necessary authority.

I do feel strongly that any legislation on this topic should apply to ALL vessels over a certain size, be they federally documented or not. Is there a difference in the danger to which, say, a 40-foot vessel is exposed, depending on its DOCUMENTATION? Clearly not. While all vessels "over 5 net tons" must be documented, the problem is how to determine that a vessel is, in fact, "over 5 net tons." There is an arcane system in effect of determining this, which depends on a system of "admeasurement". Unfortunately, this method of measurement is hopelessly flawed: vessels of vastly different sizes can, by creative admeasurement, be determined to be the same size. There is, however, precedent in other licensing plans--ie, that for "towing vessels"--for making the cut-off point the length of the vessel. This would strike a real blow for equity--and safety.

INSPECTION:

When I first testified on the need for new fishing vessel safety legislation in 1985, I urged inspection as a means of ensuring that the vessels which take fishermen to sea are in fact seaworthy. As called for in the 1988 Act, the Coast Guard has come up with some proposals for dealing with this issue. I have problems with many of these proposals, although I remain completely convinced that some form of inspection is necessary.

To start with what I think is the most desperately needed, I support whole-heartedly the Coast Guard plan for vessels at the high end of the scale. These are the vessels which include the huge factory processors which carry crews of sometimes over a hundred, who are in no way seamen--they are factory workers trapped in a floating workplace. These vessels, like the Aleutian Enterprise which sank in March of 1990 with the loss of nine lives, threaten the lives of tens and hundreds of people if something goes wrong. And one has only to read the Coast Guard's report on that terrible sinking, to see all the things which can go wrong. The Coast Guard plan calls for COAST GUARD INSPECTION AND LOAD LINE ASSIGNMENT FOR ALL COMMERCIAL FISHING INDUSTRY VESSELS, NEW AND EXISTING, EQUAL TO OR GREATER THAN 79 FEET IN LENGTH. This includes a very small percentage of the commercial fishing fleet, and that is the percentage which has the CAPACITY for the worst disasters. It is true

Barry testimony

- 3 -

that the Coast Guard would have to do some serious training of their personnel in order to provide sufficient competent inspectors, but they are quite capable of doing that.

If the inspection of these vessels "over 79 feet" were properly done, there would be no added necessity of action on the third study mandated by the Act, the "Unclassified Fish Processing Vessel Study," since all those vessels would be included.

I am less supportive of the Coast Guard's plan for third party inspection of vessels of more than 50 feet but less than 79 feet. The stickler here is that there is no standardized rating system for that "third party." There are superb marine inspectors out there in the field--and there are others whose certificate signifies nothing other than the availability of \$15. And the signature of one of them means the same--legally--as the other. I think this problem has to be addressed first: HOW ABOUT A CERTIFICATION PLAN FOR MARINE INSPECTORS?

The SELF-EXAMINATION PLAN, supported by the Coast Guard for vessels less than 50 feet in length, and by the CFIVAC for vessels up to 79 feet, simply does not make sense to me. We aren't after the good guys--they know what is needed and they provide it on their own--we're out to change the habits of the others. We're out to get the ones like the skipper of the boat my son died on, who had no liferaft, no survival suits, no EPIRB, no insurance (and therefore not even the cursory inspection described in the paragraph above)--and was on cocaine. Look over HIS shoulder as he fills out the "self-inspection form." Is there ANY incentive for him to take it seriously? The only incentive would be a guaranteed follow-up, and no one suggests that the Coast Guard has--or would have--the trained manpower to do this in a realistically meaningful way.

I fully subscribe to the theory of "getting our foot in the door" on inspection, in order that discussion on the subject be taken seriously. But what I want NOW is the inspection of the largest vessels by the Coast Guard. It is absolutely necessary.

Thank you.



Alaska Trollers Association

130 Seward St., No. 505
Juneau, Alaska 99801
(907) 586-9400
(907) 586-4473 Fax

June 11, 1993

Representative Billy Tauzin
Chairman, House Coast Guard & Navigation Sub-committee
Ford House Office Building Rm 541
Washington, DC 20515

Dear Representative Tauzin:

On behalf of the Alaska Trollers Association (ATA) I offer the following comments on Federal Register Vol. 57, No. 208, Commercial Fishing Industry Vessel Regulations; Proposed Rule.

These proposed regulations are very poorly written and difficult to understand. Contradictions abound within this very confusing document and I have been unable to find anyone, including the 13th and 17th districts staff, that has a good grasp on the proposals to articulate them to our fleet. I question how the general public can be expected to provide meaningful comment on something they can't even understand.

Subpart C

Section 28.60 Exemption Letter

ATA does not support time limitations on exemptions for classes of vessels.

Section 28.65 Termination of Unsafe Operations

In this section the Coast Guard's options to terminate a commercial fishing operation are spelled out, but what is the process to allow the operator to continue once the hazardous condition is corrected? Must the Coast Guard re-inspect the vessel? This item is unclear.

Section 28.120 Survival Craft

ATA prefers that the Coast Guard reinstate the existing Section 28.120(b), which exempts a vessel with less than four individuals on board which operates within 12 miles of the coastline from the requirement for survival craft.

Another alternative for vessels with less than four individuals on board operating within 12 miles of the coastline, would be to allow a Zodiac (or similar quality) inflatable raft to be substituted for an inflatable buoyant apparatus (IBA) or buoyant apparatus.

The IBA is a large (10-12 people), and costly (up to \$2500-not \$1400 as estimated by the Coast Guard) means to accomplish what many fishermen are already doing-carrying a raft to get the crew

out of the water in case of emergency. My understanding is that the IBA was designed for use on inside waters, so what makes it appropriate for Alaska?

A buoyant apparatus does not even appear to address the Coast Guard's stated intent "...to extend the survival time of individuals who would otherwise be in the water."

ATA has been generally supportive of the Commercial Fishing Safety Act of 1988, but we cannot support additional regulation that burdens our fleet financially yet does little to improve safety. Requiring good quality inflatable rafts, such as Zodiacs, makes much more sense.

Subpart C

Section 28.300 Applicability

Paragraph (a) is an unfair and burdensome requirement. Why would the Coast Guard require that any vessel built or undergoing conversion prior to a final rule come under the terms of that rule? The costs associated with this requirement would be substantial to the owner of the vessel. If the goal is for the industry to build safer vessels based on improved standards, then the effective date should be set for some period after any new standards are in place and should be based on the date the contract is signed, not the date the keel is laid.

Section 28.275 Acceptance Criteria for Instructors and Course Curricula

Operators should not be mandated to acquire expensive training and licenses for which they have no need. In Alaska, this would often mean traveling a great distance in addition to the course expense. There is already a network through which the Coast Guard could work to establish meaningful curriculum for operators and crew. We encourage the Coast Guard to accept the alternative of low-cost port training, similar to that being offered by many groups already working with the commercial fishing industry.

Subpart B--Stability

ATA does not support the proposed stability requirements or letters of attestation for boats under 79 feet, and requests an exemption for boats under 79 feet from Subpart E.

The stability requirements outlined are unreadable and contrary. Just when you think a boat under 50 feet is exempt, another item springs up that suggests that it really isn't.

For example, the proposal states that owners of boats 50 feet and under are excluded from the majority of Subpart E if they get stability instruction from a "qualified" individual, and sign a letter of attestation stating that they accept and understand this "instruction". Who is a "qualified" individual and is there one in each port? And, has the Coast Guard considered how the "qualified"

USCG Proposed Safety Regulations
 House Coast Guard & Navigation Sub-Committee
 June 11, 1993
 Page 3

individual will ascertain the performance of a boat under various load conditions without testing it? As for the letter of attestation, who would sign such a letter of liability without substantial information and documentation? This takes, at minimum, a drawing of the boat. Most owners of older boats, which make up a significant portion of the troll fleet, do not have line drawings of their boats. This means that the "qualified" person would have to pull the boat out of the water and make the drawings at a cost of about \$5000. In addition, to cover themselves, any truly "qualified" person is going to want to run a few tests, which average \$3000 - \$5000. [We aren't even sure which tests will be appropriate since there is no current international IMO model for vessels under 79 feet.]

Then there is the "significant alteration" item. Many of our small boat operators have diversified into other fisheries. Do they need a stability test and letter of attestation each time they add a bait shack and/or a halibut reel? Will the addition of new safety equipment require a stability test? Where do you draw the line?

Major conversions of vessels looks to be problematic as well. A significant issue for the troll fleet will be that people could avoid doing the necessary work to extend the life or improve the safety of their boats, simply because they can't afford the stability testing.

Are boats 50 foot and under really exempt from any part of Subpart E? After many phone calls to whom we believe to be "qualified" individuals, it appears that no one is exempt under the proposed regulations, and worse yet, most of our fleet will probably fail to meet the stated criteria.

The most ridiculous part is what could be required without any regard to the Coast Guard's own statement on p. 48678 of the proposed regulations that:

The Coast Guard is actively pursuing the development and use of advanced methods for evaluating small vessel stability, particularly for commercial fishing industry vessels....The research being conducted throughout the U.S. and in other countries is still mainly in the theoretical stage. However, a greater level of effort and coordination is being provided by the Coast Guard, which in time, will lead to practical solutions.

Why does the Coast Guard seek to implement costly, unproven, THEORY in lieu of practical solutions? If there are no practical standards for stability for small commercial fishing vessels, then there is no rationale for the Coast Guard to take its proposed

USCG Proposed Safety Regulations
House Coast Guard & Navigation Sub-Committee
June 11, 1993
Page 4

action at this time.

Out of curiosity, how many trollers capsize? ATA would be interested in examining information that demonstrates this to be a problem in the troll fleet.

Small Entities

Our association represents the commercial troll fleet which is made up of many small business people, many of whom fish within 12 miles of the coast. In fact, most of Alaska's 2500 troll permit holders will be substantially impacted if these regulations are implemented.

Since the implementation of the Commercial Fishing Industry Vessel Safety Act of 1988, trollers have made significant investments in newly required safety gear. I would guess that many of our members are still paying off the last round of requirements and will be hard-pressed to comply with the latest proposals.

For example, consider a troller that fishes a 46 foot boat within 12 miles and the cost of a few of the more expensive safety items from the total package as proposed: EPIRB (\$2500), 2 survival suits (\$400 each), IBA (\$2500), and stability standards (\$8000). For this short list, the individual will spend a minimum of \$13,800. In 1990, the average Alaska power-troller earned \$32,000 (The McDowell Group, 1992). This makes the \$13,800 safety bill 43 percent of an average Alaska troller's annual earnings.

The troller who fishes a 52 foot boat beyond 12 miles will add another \$2000 for a life raft (difference between the IBA and life raft), and spend the equivalent of 49 percent of his or her annual earnings.

Remember, the above estimates do not consider all of the safety gear, training, modifications, or maintenance that may be necessary to fulfill all of the obligations of the existing or proposed safety regulations. Nor was there any mention of the other costs associated with the business of being a fisherman or providing for themselves or their families.

Safety regulations are already placing a significant economic burden on the troll fleet. ATA considers the proposed regulations ineffective, unreasonable, and financially crippling for small boat operators.

The proposed regulations are untenable as they do not reflect technical or economic reality for our vessels or fishermen. ATA recommends that the proposed regulations be withdrawn until such time as the Coast Guard can achieve the goals of reasonable,

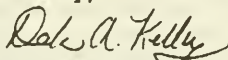
USCG Proposed Safety Regulations
House Coast Guard & Navigation Sub-Committee
June 11, 1993
Page 5

achievable, economical, readily understood standards of safety, which will be mandatory for industry compliance. Future proposals should provide a minimum comment period of 120 days and include a high level of interaction between the affected fishermen and Coast Guard personnel.

In closing, the Coast Guard should be required to spend ample time reviewing existing and proposed safety regulations with its staff, so that each district has the same information and can get that information out to the public. This step could go a long way toward increasing the public's confidence in the regulatory process.

ATA appreciates the opportunity to comment on these important regulations, and requests that the House Coast Guard and Navigation sub-committee send this package back to the Coast Guard for additional work on the elements outline above.

Cordially,



Dale A. Kelley
Executive Director

ERE Associates Ltd.

545 Old Harbor Road, North Chatham, MA 02650-1134 U.S.A. TEL: 508 945 2182 FAX: 508 945 0502

15 June 1993

Honorable Gerry E. Studds, Chairman
Committee on Merchant Marine and Fisheries
1334 Longworth House Office Building
Washington DC 20515-6230

Dear Mr. Chairman and members:

I regret that I am unable to join you today for these important discussions regarding fishing vessel safety. It was 15 years ago that I began my campaign to improve safety on board commercial fishing vessels in the United States. Ten years ago I testified before this committee, urging congressional action to curb the appalling loss of life and vessels in this very dangerous industry. In 1988 Congress adopted the "Commercial Fishing Industry Vessel Safety Act" (P.L. 100-424), herein after referred to as "the Act".

As you will hear today, the regulations pertaining to lifesaving and firefighting equipment adopted pursuant to the Act have resulted in the survival of fisherman involved in serious fishing vessel casualties. But, there is more to be done. Licensing is the next step.

The licensing plan

In January 1992 the Secretary of Transportation forwarded the Coast Guard's "plan for licensing operators of uninspected federally documented commercial fishing industry vessels". In March, Congressman Don Young requested that the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) provide him with "an analysis and comments on the Secretary's plan." In May 1992 the CFIVAC - on which I serve - met in Washington, D.C. to discussed the plan in detail. The Committee was critical of many details of the plan, but was in general agreement with the need for improving the qualifications of those who operate commercial fishing vessels. The Committee agreed to respond to Congressman Young, and sent him a letter in August 1992. A "working group" of the CFIVAC met in Seattle in September of 1992, with Coast Guard personnel, to hammer out a "revised licensing proposal". With a few modifications the revised plan was approved by the CFIVAC at its meeting in December 1992.

Marine Safety and Information Services

Page 2.

15 June 1993

Congressman Gerry E. Studds

But, I and a majority of the CFIVAC recommended that any licensing plan be applicable to commercial fishing vessels "at least 36 feet in length measured from end to end over the deck (excluding shear)" rather than "federally documented vessels". As maker of the motion I made it clear that I did not want to delay progress on the "plan", but at the same time wanted Congress to be aware that there was real concern that any plan be equitably applied to commercial fishing vessels.

The following summarizes the thoughts I expressed at the CFIVAC meeting in December 1992:

Any plan to license or certify the operators of fishing industry vessels should be applicable to all vessels. The way a vessel is registered with the government should not be a determining factor for its safe operation.

I understand that the Coast Guard was directed to propose a plan for the operators of documented commercial fishing vessels; however, any plan which does not address the operation of undocumented (state numbered) vessels will be inherently inadequate, resulting in a further reduction in parity. The 30 to 45 foot state numbered vessels operating off-shore is exposed to the same risks as the documented vessel of similar size with which it competes.

Current Federal statutes (46 U.S.C. Chapter 89) for the operation of "Small Vessels" (freight vessels of less than 100 gross tons, small passenger vessels, uninspected passenger vessels and towing vessels) make no reference to the manner of registration. It appears that in the case of "towing vessels" where the statute applies to operators of towing vessels of "at least 26 in length measured from end to end over the deck" a specific effort was made to avoid the messy issue of registration. Note that in the towing vessel statute there is no reference to area of operation. All towing vessels of at least 26 feet must be operated by a licensed operator.

In a subsequent communication to Coast Guard personnel I proposed amending 46 U.S.C. as follows:

OPERATORS FISHING INDUSTRY VESSELS -- Chapter 89 of title 46, United States Code, is amended by adding at the end the following:

FRE Associates Ltd.

Page 3.

15 June 1993

Congressman Gerry E. Studds

"Sec. 8907. Fishing vessels

"A fishing, fish processing or fish tender vessel that is at least 36 feet in length measured from end to end over the deck (excluding sheer), shall be manned and operated by an individual or individuals licensed or certificated by the Secretary to operate that type of vessel in the particular geographic area, under prescribed regulations."

Why should Congress be concerned about the vessels the plan applies to?

First, there is the problem of tonnage measurement. It would appear that all vessels over 5 net tons engaged in the fishery must be documented (Sec 46 U.S.C.A. 12108). A vessel as small as 26 feet in length can be documented. But, with creative admeasurement (admeasurement is the use of regulation, policies and construction techniques to determine the gross registered tonnage and net registered tonnage, 1 ton being equal to 100 cubic feet) vessels of 40 to 50 feet can "measure" less than 5 net tons. There is one case involving a fishing vessel of approximately 65 feet in length that was admeasured at less than 5 net tons. Thus, it is possible for vessels up to 50 feet in length to easily avoid documentation through construction and admeasurement techniques.

The Coast Guard and the Congress are not unfamiliar with the problem of creative admeasurement. For years we have seen "small passenger vessels" (vessels less than 100 gross tons) get larger and larger through the use of creative construction and admeasurement techniques, to the point that a vessel certified for over 1000 passengers, with an overall length of over 260 feet, measures less than 100 gross tons.

In 1986 Congress requested that the Coast Guard study the impact of applying the rules of the International Tonnage Convention of 1969 to the domestic admeasurement of tonnage. In 1990 the Secretary and the Coast Guard recommended no change in domestic tonnage admeasurement rules. Thus we must live with the current, and in some ways archaic, admeasurement rules and policies.

As long as the minimum requirement for documentation is based on tonnage (5 net tons being the minimum) there will be an inherent inequity in any licensing system based on documentation. Some vessels will be required to be operated by licensed personnel, while others of similar or larger size, operating on the same waters, will not.

ERE Associates Ltd.

Page 4.

15 June 1993

Congressman Gerry E. Studds

Second, vessel financing is in many instances tied to documentation. Documentation is a prerequisite to the availability of the financial security offered by the Ship Mortgage Act (46 U.S.C. 911 et seq.). Lending institutions usually require that a vessel be documented during the life of the mortgage.

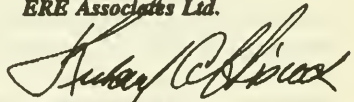
Thus, the small vessel owner needing financing must document the vessel, while an owner who has independent financing, or who has "paid off" the mortgage need not document his vessel if he can demonstrate that the vessel is less than 5 net tons.

Financing arrangements should not determine how a vessel is registered with the government, and thus whether a licensed operator is required.

In short the way a vessel is registered with the government should not determine the qualifications of the operator. If there is a need for licensing the operators of commercial fishing vessels, and I believe there is, then all vessels over a specific length should be required to have licensed operators. I urge you and your fellow committee members to consider this issue carefully during deliberations on this important legislative proposal. You should pass legislation authorizing the Coast Guard to license operators of commercial fishing vessels (including fish tender and fish processing vessels), but the plan must be equitable.

Thank you for considering these thoughts and concerns, which I request be entered into the hearing record. Please do not hesitate to call upon me if I can be of further assistance on this on any other related subject.

Sincerely,
ERE Associates Ltd.



Richard C. Hiscock,
President, Member CFIVAC

pc: Members of Committee on Merchant Marine and Fisheries

ERE Associates Ltd.

North Pacific Gillnet Alliance
2408 Nob Hill North
Seattle, Washington 98109
(206) 285-1111
June 7, 1993

Dear Member of Congress,

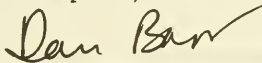
I am writing to you concerning Coast Guard matters which will be the subject of a forthcoming hearing. I have been invited to speak to the Coast Guard subcommittee, but will be unable to attend, as I will be fishing. I have contacted Alan Dujenski, former Fishing Vessel Safety Officer of the 13th Coast Guard District, and David Green, chairman of the Naval Architects for Fishing Vessel Safety, to testify. They both have great wisdom to contribute, but I regret that I know of no active salmon fisherman who is able to attend the scheduled June hearing.

I am chairman of the North Pacific Gillnet Alliance. The Alliance serves to represent the views of the 8500 gillnet permit holders and employs at least 25,000 in catching and thousands more in processing and marketing. I believe that the tens of thousands employed in the purseine and troll salmon fisheries, and other West coast small vessel fisheries, essentially hold the same views.

I am enclosing a summary of many of our critical concerns on stability, licensing, inspections and other Coast Guard concerns. I believe David Green will add vital input on stability and inspections, and Alan Dujenski on a myriad of issues from his frustrations while serving in the Coast Guard and, now, in the insurance industry. We have been very satisfied with the leadership and service of many individuals in the Coast Guard, the effectiveness of the Coast Guard on high seas enforcement and with the responsiveness of fishermen to the first group of proposals- and the resulting rules and vessel safety inspection decals and programs. My intent is to point to areas where the proposed rules would have grave and tragic consequences and freeze all vessels in time making a law breaker of any fisherman who sought to maintain and improve his productive efficiency through vessel improvements. I believe that fishermen, and ultimately the consumer, deserve and need better treatment.

I am enclosing resolutions on these matters passed by the Pacific Fisheries Legislative Task Force and the Legislature of the state of Alaska. I hope your staff will be able to meet with Alan and Dave and others from the industry to learn more than just what the time constraints of a formal hearing may permit. We in the fishing industry need your constructive action on these matters which can help and/or severely harm our industry.

Sincerely,



Dan Barr, Chairman, No. Pacific Gillnet Alliance
Co-President, Bristol Bay Driftnetters Assoc.
Chairman, Vessel Safety Committee
American Seafood Harvesters Assoc.

Per our phone conversation -

URGENT

URGENT

URGENT

Dear

Bill Wright and

- President Clinton, The White House, 1600 Pennsylvania Ave., Washington D.C. 20500
- Members of Coast Guard and Navigation Sub-committee; H2-541 Ford House Office Building, Washington D.C. 20515-6231
- Fredrico Pena, Secretary of Transportation, Dept. of Transportation, Washington, D.C. 20593
- Member of Congress, ~~Sen~~/Rep. *TAUZZIN*, U.S. Senate, Washington D.C. 20210; U.S. House, Washington, D.C. 20515

I am writing to you about some matter of vital importance to the fishing industry of this country. I support the previously implemented fishing vessel proposals. I have received and/or intend to receive a vessel safety inspection decal. I appreciate the additional opportunity to comment, especially on the stability proposals which are unworkable and impossible to implement.

I want to comment to you on some matters that are before Congress at this time.

In regards to the last Subject Notice of Proposed Regulations (SNPR) Coast Guard Proposals, my views are:

 The latest proposals were mostly unreadable. We could not get a straight answer from the Coast Guard personnel or the industry "experts", on what the proposals meant. There is much confusion among the various people in the Coast Guard offices.

 Exemptions from the requirements for groups or classes of vessels should not be time limited; they are not time limited for individual vessels.

 Make it clear that inflatable boats such as Avon, Zodiac, etc., can be substituted for inflatable buoyant apparatus.

 The termination of a voyage provision should specifically provide that a vessel can resume fishing or its voyage when corrections have been made.

 The Coast Guard spent \$500,000 on a Stability Study. How many existing types of US Fishing vessels were tested and which tests were used: the simplified or the submergence test? Require the Coast Guard to publish the results of the \$500,000 stability study.

 Detailed plans and drawings on my vessel are not available. These would be required to support the proposed \$5000 unnecessary stability tests that my vessel cannot pass anyway. Require the Coast Guard to redraft or offer new proposals for new vessels less than 79' with regional hearings. Require the Coast Guard to **drop all proposed stability requirements and letters of attestation for existing vessels less than 79' and new vessels less than 50'.**

✓ My vessel is a production type, not a custom type as the proposals assume. Other similar vessels have different arrangements and operate safely and I may need to make the same arrangements which the proposals do not permit. They do not allow for upgrading the fleet as the proposals freeze all existing vessels in time. The Alternate Section test to determine stability would destroy the vessel - in reality to check on the stability, one would have to sink the boat to meet the impossible submergence criteria designed for vessels under 20'. On fishing boats, passenger vessel stability tests do not work either.

✓ Adding additional watertight bulkheads to my existing vessel would be ___ impractical, ___ extremely expensive and/or ✓ impossible.

✓ If I must change the way in which I land, catch, or process fish for any reason including technological innovations or fisheries management changes, I would be forced to meet new stability regulations which are *impossible* to meet.

✓ The Coast Guard needs to build more on the testimony of fishermen. There have been some improvements but much of the previous wise, practical testimony of experienced fishermen and naval architects were not included in the last proposed regulations and many of the provisions of the proposals were horrible. Do not allow the Coast Guard to impose stability requirements on vessels under 79'. Require the Coast Guard to conduct regional hearings on any future proposals with a minimum of 120 day comment period which all fishing editors have requested.

✓ I fish on a vessel under 36'. Do not allow the Coast Guard to require a buoyant apparatus inside 3 miles or inside the boundary line, which ever is greater. Follow the spirit of Congress exclusion for my vessel

✓ I fish in Alaska and the Aleutian Trade Act provisions are ridiculous and the provisions will cost \$500,000 (not the \$70,000 Coast Guard estimate) per vessel. It will provide no increase in safety and will drive them all out of business.

✓ I do not feel the existing Vessel Safety Advisory Committee adequately represents the 95% of U.S. fishing vessels which are less than 79'. I would like the makeup of the committee to include more working fishermen from the vessels less than 79'.

IN REGARDS TO OTHER ISSUES BEFORE YOU:

LICENSING:

✓ I oppose licenses and more federal bureaucracy on vessels under 79', but I would support a practical training requirement or substitute competency test. Industry experts suggest a phased in 5-day course. For vessels under 79', licensing could be accomplished through industry training requirements which could be incorporated within current training requirements under the recently enacted regulations pursuant to the first round of imposed regulations. **The Coast Guard report states that their proposal will be costly. It would be extremely burdensome on operators under 79' and is not necessary.**

INSPECTIONS:

On November 12, 1992, the Coast Guard submitted an inspection plan to Congress indicating that the Advisory Committee had reviewed the proposals. They just reviewed the proposals in May 1993. Now, following this review, the proposals should now be submitted widely to fishermen for *their* review so they can provide Congress with important meaningful input

I beleive that the Fishing Vessel Safety Act will have great safety benefits. Inspections are not necessary. Rather, they are burdensome on vessels under 79'. If an inspection program is developed, it should require a vessel to pass the Coast Guard Fishing Vessel Safety Sticker Inspection Program or participate in a self-inspection every five years. On-fifth of the vessels would be required to pass each year to minimize over burdening the Coast Guard. Be aware that most small vessels have total annual fishing seasons of less than two months and some less than a week.

OTHER:

Again, require the Coast Guard to have at least a 120 day comment period on all proposals.

Require Regional hearings so fishermen can check perception and build on each other's wisdom.

Require the Coast Guard to check with the FCC and other affected bodies on all proposals. Have the Coast Guard request other agencies (such as the FCC) to use the Notice to Mariners to inform maritime users of proposals and issues that affect them.

OTHER COMMENTS:

Please help!

CONGRESS: You have done a good job on the newly imposed Safety Regulations. The Fishing Industry appreciates your concern in shaping safe policy for the industry. We feel the Coast Guard did a good job on Phase One but missed the boat on the second round. We in the industry feel the proposals in Phase Two are incredulously burdensome and we the Fishing Industry needs your help. Together we need to collaborate shaping realistic regulations and listen to the needs and concerns of American fishermen. THANK YOU FOR YOUR HELP ON THE ABOVE CONCERNS WHICH ARE SO IMPORTANT TO ME AND THE FISHING INDUSTRY OF OUR COUNTRY.

SINCERELY;

Jan

Chrm

ADDRESS

BORR

*my celluar phone
on my fishy
boat is*

Co-Pres.

907-439-5328

PACIFIC FISHERIES LEGISLATIVE TASK FORCE

COAST GUARD PENDING COMMERCIAL VESSEL REGULATIONS AND OTHER FISHING SAFETY PROPOSALS Resolution/Position Statement 93-2

CHAIRMAN
Representative Jim Whitty

VICE CHAIRMAN
Senator Dan McCorquodale

MEMBERS

ALASKA
Senator Fred Zharoff
Senator George Jacko
Representative Carl Moses
Representative Mark Hanley

CALIFORNIA
Senator Dan McCorquodale
Senator Henry Mello
Assemblyman Dan Hauser
(appointment pending)

IDAHO
Senator John Hansen
Senator Bruce Sweeney
Representative James Lucas
Representative Marvin Vandenberg

OREGON
Senator Bill Bradbury
Senator Stan Burn
Representative Jim Whitty
Representative Chuck Norris

WASHINGTON
Senator Larry Vognild
Senator Neil Amondson
Representative Bob Basich
Representative Steve Fuhrman

PAST CHAIRMEN
Senator Bill Bradbury
Assemblyman Dan Hauser
Senator Ron Beitelspacher
Senator Fred Zharoff
Representative Sim Wilson

EXECUTIVE DIRECTOR
Paul Hanneman

Pacific Fisheries Legislative Task Force

WHEREAS, The Coast Guard has assisted American fishermen on high seas driftnet enforcement, and;

WHEREAS, the Coast Guard has developed some improvements in fishing vessel safety programs, and;

WHEREAS, The Coast Guard is finalizing fishing vessel safety requirements, and proposals on other issues;

THEREFORE, BE IT RESOLVED, this Task Force requests:

- A. The Coast Guard incorporate the suggestions and recommendations of naval architects on the Pacific Coast;
- B. The Coast Guard respond to the fishing industry regarding stability, tests, bulkhead changes on existing vessels and other suggestions;
- C. The Coast Guard resubmit proposals for new vessels under 50 feet;
- D. The Coast Guard recognize that new and existing fishing vessels need to make continual improvements in landing, catching and processing and must not be unreasonably burdened with regulations.

AND BE IT FURTHER RESOLVED, The Guard Guard proposals are complex and the industry has difficulty responding by February 28, 1993;

AND BE IT FURTHER RESOLVED, the effective date for implementing the vessel safety proposals be at least six months after publication of the regulations, and for new vessels at least twelve months after publication; and,

BE IT FURTHER RESOLVED: The Coast Guard allow at least 120 day comment period on any proposals and recognize the need for public hearings before any such proposals are submitted to Congress; and,

BE IT FURTHER RESOLVED: This Resolution shall be submitted to the National and State Legislative and Administrative jurisdictions with control or influence in the concerns expressed here.

Adopted February 20, 1993
Tacoma, Washington

STATE OF ALASKA THE LEGISLATURE

1993

Source
SJR 27Legislative
Resolve No.
6

Relating to United States Coast Guard commercial fishing vessel safety regulations.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the United States Coast Guard has proposed regulations on commercial fishing vessel safety; and

WHEREAS the Coast Guard has not allowed sufficient time for commercial fishermen and the commercial fishing industry to study the complex proposed regulations and to meaningfully respond to the proposed regulations; and

WHEREAS the proposed regulations may be difficult for existing commercial fishing vessels to meet and may pose a significant financial burden on commercial fishermen and the commercial fishing industry; and

WHEREAS the proposed regulations do not recognize the necessity to continually alter and improve fishing vessels to enhance the vessel's performance;

BE IT RESOLVED that the Alaska State Legislature respectfully requests the United States Coast Guard to

(1) extend the comment period on proposed commercial fishing vessel safety regulations in order to provide commercial fishermen and the commercial fishing industry a total of at least 120 days to comment on the proposed regulations;

(2) hold public hearings on proposed commercial fishing vessel safety regulations before closing the comment period on the proposed regulations;

(3) respond to suggestions made by commercial fishermen and the commercial fishing industry regarding stability tests, bulkhead changes on existing vessels, and other topics important to commercial fishermen and the commercial fishing industry;

(4) incorporate into the proposed commercial fishing vessel safety regulations the suggestions and recommendations made by private or independent naval architects familiar with commercial fishing and commercial fishing vessels on the Pacific Coast;

(5) propose commercial fishing vessel safety regulations for commercial fishing vessels that are under 79 feet in length only after the commercial fishing industry has accepted international commercial fishing vessel safety standards; and

(6) delay the effective date of final commercial fishing vessel safety regulations applicable to existing and new commercial fishing vessels for a minimum of one year after the final regulations are published.

COPIES of this resolution shall be sent to the Honorable Bill Clinton, President of the United States; the Honorable Federico Pena, Secretary of the U.S. Department of Transportation; Admiral J. William Kime, Commandant of the U.S. Coast Guard; the Executive Secretary, Marine Safety Council, U.S. Coast Guard; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.



JMC

404 Fisheries Building
4241 21st Ave. West • Seattle, WA 98199 U.S.A.

Jensen Maritime Consultants Inc.

NAVAL ARCHITECTS
MARINE ENGINEERS

Phone (206) 284-1274

Fax (206) 284-2556

TO: Commercial Fishing Industry Member

SUBJ: Commercial Fishing Industry Vessel Regulations,
Proposed Additional Rules

The October 27, 1992 Federal Register published additional proposed regulations for public comment. Written comments will be accepted until 28 February 1993. There is also a toll free number 1-800-282-8724 which may be called at anytime to record a comment message. This is sort of a substitute for public hearing.

Written comments go to: Executive Secretary
Marine Safety Council (G-LRA-2/3406)
(CGD 88-079a)
U.S. Coast Guard Headquarters
2100 Second St. SW
Washington, D.C. 20593-0001

The new proposals are supposed to focus on stability for vessels under 79 ft. and the implementation of the Aleutian Trade Act. As presented however, they have prospective major impact on vessels of all sizes.

What do these new regulations do?

[ITEMS 1,2,3-NO COMMENTS ITEM 4-ALEUTIAN TRADE ACT-DELETED]

→ Item 5 The proposed stability regulations re-establish "alterations to the fishing or processing equipment for the purpose of catching, landing or processing fish in a manner different than has previously been accomplished on the vessel" as a basis for requiring un-mitigated compliance with the published new vessel stability criteria. This applies to all existing vessels, both above and below 79 ft.

Previously this requirement was treated the same as substantial alteration. This permitted some older boats to remain in operation through weight compensation for any later changes to the vessel. This is a major change by the USCG and badly clouds the meaning of what is otherwise presented relative to stability.

Owner "letters of attestation" of compliance with stability instructions will be required for vessels of all sizes. To obtain data for such instructions requires a stability test. For smaller vessels, hull form documentation is very scarce so dry-docking and generation of new data will be required. When that data is applied to stability test information, there will be very large numbers of smaller vessels which will not meet stability criteria.

→ The letter of attestation does not change fundamental owner or vessel master responsibilities. It seems to only satisfy a bureaucratic desire for paper work.

A confusing mixture of intact stability criteria and special tests (alternatives to incline experiments) are proposed for vessels less than 79 ft.

The basic stability criteria are obtainable for new vessels less than 79 ft. down to some reasonable size (I believe 50 ft. is reasonable.). This is not a problem.

For existing vessels under 79 ft. there is a problem. The new vessel criteria or alternative tests are activated by minimal changes to a vessel. The alternate tests offered are either impractical ("immersion" [sinking] test) or so conservative that few, if any, vessels will pass ("alternative simplified stability test"). That leaves a conventional incline test as the only means to acquire quality data to develop stability instructions necessary to support owners' "letter of attestation".

This stability criteria is actually for a decked hull in a high seas operation. The criteria makes no allowance for vessels operating in coastal, partially protected or protected waters. Nor can the criteria be applied to vessels with cockpits or open wells. Thus somewhere between a great many and most of the existing vessels less than 79 ft. cannot pass these criteria.

→ The small vessel stability regulations, as proposed, unnecessarily freeze most vessels under 79 ft. in time. As even small changes occur, owners would be faced with technically impossible stability standards.

Presently the small vessel stability regulations and re-defined criteria relative to equipment changes is all retroactive to September 1990!

This may seem difficult to completely understand. It is, and that is the worst part of the entire matter. Except for items 1 and 2 above, these proposed regulations are not readable. With careful study one begins to develop an idea of meaning, but then you find exceptions and additions scattered in unexpected areas. The proposed stability requirements should be revised to be performable. Then they should be written in understandable language.

I have written a lengthy letter addressing technical aspects in detail. You the industry however must also respond.

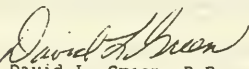
→ I encourage you to write or call the Coast Guard concerning these proposals. If nothing else say you can't even understand them.

↗ If you do not respond, the bureaucracy will quietly fold its tent, print the proposed regulations as final rule and say "not many objected."

If I can assist please call me at 284-1274.

Sincerely yours,

JENSEN MARITIME CONSULTANTS, INC.


David L. Green, P.E.
President

JMC



JMC

Jensen Maritime Consultants Inc. NAVAL ARCHITECTS
MARINE ENGINEERS

February 18, 1993

Executive Secretary
Marine Safety Council (G-LRA-2/33406) (CGD 88-079a)
U.S. Coast Guard Headquarters
2100 Second Street SW
Washington, D.C. 20593-0001

Subject: SMPR FISHING INDUSTRY VESSEL REGULATIONS,
PROPOSED RULES - ADDITIONAL COMMENTS

Reference: (a) My letter 28 January 1993
(b) USCG Draft Regulatory Evaluation for
46 CFR Part 28
Comm'l Fishing Industry Vessel Regulations
(GD 99-079(a))

Gentlemen:

From continuing review of the proposed regulations and related data and information, these comments supplement those offered in reference (a):

* Proposed Paragraph 28.65 Termination of Unsafe Operation.

This includes a criteria "Required watertight closures missing or inoperable:. Philosophically, this is fine. As I stated in reference (a) however, the issue of watertight (and weathertight) has not bee addressed head-on.

The only items I find in Chapter 28 relative to watertight are:

- ** 28.250 High water alarms are required in spaces with hull fittings, spaces subject to flooding:, and spaces with non-tight closures. This applies only to vessels over 36 FT.
- ** 28.255 Bilge dewatering is required for watertight

February 18, 1993 -1

404 Fisheries Building
4241 21st Ave. West • Seattle, WA 98199 U.S.A.

Phone (206) 284-1274
Fax (206) 284-2556

compartments, and fish sorting and processing spaces.

These very indirect references to watertight closures certainly do not provide a non-engineer boarding officer much to judge unsafe criteria. It also underlines my prior comment that attention to watertight integrity in the regulations is lacking-- there are no requirements except those indirectly imposed by a comprehensive stability study.

* Reference (b) is an astonishing document. The following comments merely touch selected highlights.

** Overall it is a classic example of poor input data exposed to "standard" accounting and analysis procedures.

** Part 3.2 Compliance Costs

In reference (a) I discussed specific topic areas where the Subpart D requirements for ATA vessels far exceed "inspected vessel" requirements. The general statements in this document relating to Subpart D are unbelievably out of touch with long standing portions of 46 CFR requirements.

The estimated cost impact is likewise unbelievable. The section by section analysis of what would probably be required is simply no good-- the scope of items does not reflect what the regulation would require and the cost estimates are accordingly worthless. I am fully prepared to discuss details but will touch only a few items:

- *** 28.320 Find an installed system which will cost less than \$30-\$35,000.00.
- *** 28.335 The requirement has nothing to do with gasoline. As written it requires replacement of all non-seamless pipe in fuel systems. Start a cost budget at \$40-\$50,000.00
- *** 28.370 I do not believe any ATA vessel satisfies the cable requirement as written. Start estimating at \$20-\$30,000.00.
- *** 28.375 This source of power must (not may) be outside the engine room. Start costs at \$50-\$60,000.00.
- *** 28.405 These vessels do have hydraulic systems on nearly all cargo booms. The insignificant cost could start at \$15-\$20,000.00

February 18, 1993 -2

JMC

** The first task in estimating economic impacts is to determine the specification requirements. This obviously was not done and therefore the entire Part 3.2 is bureaucratic waste. [If my credentials to estimate are at issue, I offer over 20 years as a U.S. Coast Guard Naval Engineer, six years shipyard management and project engineering, and seven years as an engineering consultant.]

** The proposed rules for ATA vessels should be rescinded and new non-penalizing, but safety related rules considered. I note that on page 38 of reference (b), not even a weak excuse of safely benefit is offered for the proposed regulations.

** Part 4.0 Requirements for

The material in this part merely reinforces my prior comments that the USCG has not identified what happens relative to stability in the real world.

*** I do not believe inadequate intact stability is the big killer in fishing vessel operations. Flooding is a major everyday threat that has precipitated sinking by capsizes, but regulations haven't addressed it.

*** Nifty "submergence" and "simplified" stability tests will not drive design when the construction costs will far exceed stability test costs.

*** Stability instructions by a "qualified person" aren't free. It appears the Coast Guard assumes this wizard "qualified person" looks at the vessel and writes it up. If he does, he has just exposed himself to unlimited liability by either offering incomplete (negligence) work or without sufficient test data (negligence again). This is the real world. If only good seamanship and general good stability practice instruction is required, the Coast Guard should include these in the regulations.

*** Extra bulkheads do reduce progressive flooding but do not reduce the initial flooding-- a watertight envelope is still the first issue.

* I am now aware of a CGHQ flow chart demonstrating application of proposed subpart E rules. It clearly illustrates a change in fishing/processing methods is no longer equivalent to substantial alteration. This departure from published final rules, as amended, is without a word of discussion.

Industry has made no secret that a high percent of the existing fleet (less than 79 FT) will not meet required

February 18, 1993 -3

JMC

energy/righting arm criteria to the letter, that the "simplified" passenger vessel type test is not applicable and the submergence test is ridiculous. It seems the Coast Guard intent is to freeze these many vessels in their present fishing configuration.

This is totally improper.

The change in fishing/processing method criteria should be incorporated into the substantial alteration definition.

- * The proposed rules for new vessels under 79 FT are performable. The Coast Guard must recognize however, that the requirements of 28.530 (and, tied to it 29.505) require substantive stability information derived only from a stability test.
- * Roll tests - These procedures are not limited to single condition evaluations. JMC conducts such tests with both full and empty hulls. We also use both extreme high and low roll constants for evaluation of data. Based upon how a particular vessel compares to those extremes, recommendations are offered to improve or maintain stability status. No absolute stability evaluation is offered. I believe that this procedure, in spite of shortcomings, remains a valuable tool for existing vessels.
- * The explanatory text of both the Federal Register and that of reference (b) indicate the USCG expectation that new designs will gravitate to compliance with the "simplified" stability test to save money. Somehow there is a very fundamental misunderstanding of the cost of construction and operation of vessels. The capital investment to build a vessel with inferior payload capacity to meet this test far exceeds the cost of incline experiments and reports during a vessel's life cycle.
- * The stability regulations for vessels less than 79 FT ignore the existence of commercial fisheries in partially protected and protected lake, bay, sound and sound waters. The proposed regulations for new vessels, and those same regulations applied to existing vessels in event of change in catching/processing methods, are for unrestricted ocean operations.
- * I summarize my recommendations relative to SNPR as follows:
 - 1) Aleutian Trade Act Vessels - cancel applicability of Subpart D, as presently proposed, in its entirety. Propose new "Subpart D type" regulations only if they address real safety issues for these vessels and are no more demanding than for corresponding inspected vessels. Implementation would be triggered by new construction or major conversion, only.

February 18, 1993 -4

JMC

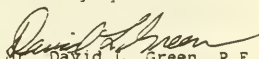
- 2) Modify Subpart D for all vessels as it pertains to fuel system piping and hydraulic hose to be no more severe than for inspected vessels.
- 3) Modify Intact Lighting Energy (28.570), Severe Wind and Roll (28.575) and Water on Deck (28.565) to correct problems outlined by reference (a).
- 4) Incorporate "alterations to fishing and processing" into the definition of Substantial Alteration.
- 5) Clarify the meaning of "Required watertight closures" in 28.65.
- 6) Completely rethink the letter of attestation and related sections. This sets in motion an absolute requirement for stability testing. It is a particularly acute situation for vessels less than 50 FT.
- 7) The proposed stability requirements for vessels under 79 FT do not correspond with the FR or Draft Regulatory Evaluation explanations. They should be redrafted in clear, unambiguous language and republished for public comment. The regulations should clearly address new and existing vessels. Further they should recognize that all fisheries do not require ocean going vessels. Put a lower limit to lengths in effect.
- 8) Update loadline regulations to include the fishing industry.
- 9) Define watertight envelope standards with a phase-in for existing vessels.
- 10) Review communication with the public. By law and prevailing attitude, simple publication of proposed regulations in the Federal Register is an acceptable means to communicate with the public. It really isn't, and most everyone knows that. If the Coast Guard is interested in communicating with a nation-wide and diverse industry such as commercial fishing, a positive pro-active informational campaign in advance of an official Federal Register posting could be very effective. The real cost of such a program would be a tiny fraction of a search for a missing vessel.

* Finally, an editorial comment.

Religiously it is noted in the Federal Register and reference (b) that the CFIV Advisory Committee has been consulted. The committee has only one possible technical member, initially filled by a gentleman highly qualified in vessel stability. I can safely say he was ignored from the start. Now he has been replaced, and the committee has no visible expertise in ship design, construction or stability. Certainly reference (b) does not lend sound technical support. Yet, here we have an implied endorsement of a highly technical proposed change. Something is wrong.

Sincerely,

JENSEN MARITIME CONSULTANTS, INC.


 Mr. David L. Green, P.E.
 President, JMC
 Chairman, NAFVS

January 28, 1993

Executive Secretary
Marine Safety Council (G-LRA-2/3406) (CGD 88-079a)
U.S. Coast Guard Headquarters
2100 Second St. SW
Washington, D.C. 20593-0001

Subject SNPR - FISHING INDUSTRY VESSEL REGULATIONS,
PROPOSED RULES

Gentlemen:

Herein are my comments on the proposed rules.

Before proceeding with technical specifics, there are several realities which require statement and must be understood when defining technical regulations for the fishing industry:

- * The Federal Register is not on the reading list of fishermen. Neither is the code of Federal Regulations (CFR) widely available.
- * To understand these proposed rules, the proposed items must be entered into existing rules. If you don't have all the pieces, you really can't examine the puzzle.
- * Changes in technical requirements, stability for one, are extremely difficult to communicate to a group such as fishermen owning and operating vessels less than 79 ft. By the Coast Guards figures, there are approximately 6800 and 103,400 vessels in the 50-79 ft, and less than 50 ft categories, respectively.
- * Who are these 110,000 fishermen? They include: Full time, part time and seasonal. Some of the seasons last from hours to a week. Some fishermen belong to no association and aren't even insured. Some don't even fish every year. It is an extremely heterogeneous group, the common connection being that at some time they fish commercially.
- * What are these fishing vessels? They include an extremely wide variety of sizes with characteristics to suit target fisheries and operating environments. The United States Fishery itself is distributed over perhaps the widest range of environments as any other national fishery. There is no single magic design applicable to a single geographic region. Many fisheries impose specific restrictions unrelated to good vessel design.
- * Not only does this proposed change affect the less than 79 ft vessels, an additional 20 vessels are singled out for application of the Aleutian Trade Act. Further, either by design or error the proposed stability rules dramatically affect all vessels over 79 FT!
- * The original final ruling on fishing vessel safety regulations affected every vessel in some manner. Where specific equipment requirements were established, every vendor in the country assisted with passing the word. Technical requirements must be applied on a case by case basis to each vessel; the public deserves clear and definitive regulations that can be understood - there are no salesmen to help spread the word.

- * Subparts C,D,E and F were far from good, but readability was at least passable.
- * Subparts C,D,E and F collectively applied to about 800 vessels. Now through the use of confusing and convoluted subpart application and other statements, you have attempted to not only extend regulations to two new groups totaling 110,000 vessels, but also define special requirements for a new subgroup of 20 vessels! Readability is terrible. In fact, the actual meaning of some items is an issue.
- * The under 79 ft stability vessels deserve a separate sub-sub or sub-part to clearly state applicable requirements. This could easily be the subpart of 46 CFR with direct functional impact on the most individuals. It has to be readable.
- * The ATA vessels should have a separate subpart similar to processors: (1) The specific applicable requirements can then be clearly stated or otherwise cited; (2) It will relieve the 110,000 other users of chapter 28 the confusing and burdensome task of reading past the qualifications for 20 vessels for the next umteen years.
- * In short give the fishermen a break - make the regulations readable.
- ** The government regularly specifies that technical manuals prepared for field use be drafted for about 8th grade education. All it requires is short sentences and common words.
- ** The insurance industry has made readable policies.
- ** The Coast Guard can do it in regulations.

Moving on to technical matters, subpart E stability.

- * Paragraph 28.500 applicability
 - ** FR/Vol 57, No 3/ January 6, 1992 modified the final ruling to equate "alterations of fishing..... previously accomplished on the vessel" to a substantial alteration. This is not in the proposed ruling.
- This single item has incredible impact on all vessels including those 79 ft and over-"alterations of fishing....on the vessel" are again requiring the same action as major conversions!
- If an oversight has not occurred, then the entire meaning of proposed regulations is changed!
- IT IS DIFFICULT TO EXPLAIN THESE PROPOSALS IN THE FIRST PLACE. ATTEMPTING TO INCLUDE THE CONCEPT THAT THEY REALLY DIDN'T MEAN THIS, GLAZES A LISTENERS EYES.
- FOR THIS REASON ALONE THE ENTIRE SUBPART E PROPOSAL SHOULD BE WITHDRAWN, RE-DRAFTED AND RE-PUBLISHED FOR COMMENT. *[AND HAVE REGIONAL HEARINGS]*

** There is no applicability date for vessels under 79 ft. It can't be retroactive to September 1990! There should be an applicable keel laid, under construction, etc... for these vessels. Actually, it should not be keel laid, it should be signed contract for construction or conversion. Who can forecast an effective date and there are substantial up-front costs before a keel is laid or conversion construction begins.

** Subparagraph (c) -

This requires all vessels under 50 ft to comply with something, with 28.505, 525, 530 as alternatives.

Going to 28.525, you find it is mandatory for vessels under 50 ft anyway. Also, for vessels under 50 ft it throws in the 28.250 and 28.255 for good measure. For existing vessels, this is all contrary to 46 USC 4502 (e)(2) that prohibits changes to existing vessels.

Going to 28.505 and 28.530, these respectively require attestations of stability and stability instructions. There is no way for the designated "qualified person" to start this chain of events without some firm, unqualified stability test data.

In the FR discussion however the Coast Guard is saying: The majority of vessels under 79 ft are less than 50 ft and "the Coast Guard is proposing to eliminate stability tests for these vessels". THIS IS ABSOLUTELY UNTRUE. The Coast Guard is clearly requiring tests to acquire data and there is no alternative.

THIS MIS-INFORMATION IN THE FEDERAL REGISTER AFFECTS 100,000 VESSEL OWNERS WHO ARE NOT USUALLY TECHNICALLY INCLINED TO OTHERWISE UNDERSTAND REGULATION REQUIREMENTS.

FOR THIS REASON ALSO THE ENTIRE SUBPART APPLICABLE TO VESSELS UNDER 50 FT SHOULD BE WITHDRAWN. REDRAFT AND REPUBLICATION SHOULD ALSO BE RECONSIDERED BASED UPON LATER COMMENT.

* 28.505 Vessel Owner Responsibility

Strictly interpreted, this does not apply for an existing vessel 50 ft and over, unless there is substantial alteration, major conversion, or "alteration of fishing.....vessel". For vessels less than 50 ft, it is required de-facto for all vessels (re 28.500 (c)). (A strict or loose interpretation should not be required, it should be clearly meaningful.)

Philosophically this requirement sounds fantastic - "make the man sign on the dotted line."

It seems to be based upon a Coast Guard assumption that "qualified individuals" can simply look at all boats under 50 ft and will lay-out a comprehensive stability program. It also seems to assume the owners and operators don't understand stability at all.

It's untrue that "qualified persons" can easily deduce stability status of a vessel without test. It is also untrue that the owners and operators don't understand much about stability - they generally can't do the numbers but know a tremendous amount about the stability of their vessel. They know the feel of a thousand different loading conditions in the environment of their operations. That knowledge can not be obtained from any test or calculation.

The FR discussion of 28.505 implies that the operator/owner and "qualified individual" just talk it over and come up with instructions together. Those words however are not in the regulation proposal. No matter what, there will be vessel losses. The legal industry would crucify parties to a letter of attestation that was not supported by numbers (test data and calculations).

Where there are formalized test report and stability instructions, they should be the reference in a letter of attestation, not simply a name. Under no circumstances should the Coast Guard suggest the simple reference to a persons name. If there is no report, there should be no name or references.

Each prospective "qualified individual" under this proposed system will have to attend to his own liability. I see the rules saying "you establish a standard for this existing vessel, the Lord help you if you are wrong". I can not identify performing "qualified individual" services within these proposed regulations unless I have inclining test data and the vessel will meet the 28.570 intact stability criteria.

The letter is a bad idea and should be discarded.

* 28.515 Submergence Test...

The continuation of this test in the regulations remains a baffling mystery. This type of test is only suitable for production line prototypes or periodic validation of production line quality. The lateral offset of the equivalent fish load is a very severe requirement. To achieve the very limited stability for the required equilibrium point, very very substantial increases in buoyancy would be required.

I personally conducted this type of test on USCG utility boats many years ago and can equate the problems to small commercial fishing vessels. Very small changes to a vessel, even smaller than those in 28.501(c), would void acceptable test results. Retest of a modified operational vessel is totally impractical.

I offer that this test is simply not valid for fishing vessels.

* 28.520 Alternative Simplified Stability Test

** Editorially (a) is incorrect as it cites Paragraph 28.565 through 28.575. It should be simply 28.570.

** Functionally the test appears to be useless, and it is only offered for vessels between 50 and 79 ft anyway.

I applied the test mathematically to a new 58 L x 22 W limit seiner and an older 52 L x 16 W troller.

The 58 x 22 seiner passes all Subpart E requirements with wide margins for all criteria at all loading conditions. When this test is applied, it fails in all conditions, even for protected waters.

The 52 x 16 W very nearly passes Subpart E requirements. Where it does not meet the requirements, it is usually just one criteria failing by a few %. When this test is applied it also fails.

These two examples underline the problem of this so called simplified test. It was adopted from small passenger vessel practice and is simply not applicable. It requires a high freeboard, but freeboard alone does not make a safe vessel.

The comment in FR/28.525 that this test would "allow evaluation of the stability of the majority of commercial fishing industry vessels without a stability test and detailed calculations" is absolutely incorrect. All indications are that only a tiny percentage might pass.

The comment in FR/28.520 that "this test along with the stability regulations in general is intended to promote fishing vessel designs with larger freeboards" is acknowledged but also considered to exhibit a somewhat naive position.

The objective is to establish minimum stability standards for new construction. The intact stability standards appear to be adequate and for new designs are achievable without significant problem.

Additional freeboard is always better, but to believe that the availability of this simplified test will drive freeboard that high is not well considered.

Comment in FR/28.520 concerning USCG efforts in pursuing and developing advanced methods are acknowledged but viewed with a jaundice eye. We know of an expensive effort with an out of country firm to essentially gather a library of designs. That firm however had no particular fishing vessel experience or expertise. There has been no proactive move by the Coast Guard with respect to experienced fishing vessel designers in the United States. In fact we have been largely ignored.

I have absolutely no wish to foster any bad will with the Coast Guard by any of my comments.

As a citizen however I believe we need the facts and not glossy comments and bureaucratic positions.

Bottom Line - this test is of no value in the real world. In fact for vessels less than 79 ft, the Coast Guard is not offering any actual alternative to inclining experiment and detailed analysis.

* 28.525 Alternative Subdivision

** Related comment also under 28.500.

** What is this subdivision an alternative to?

** (b) is nice idea but should be with 28.580 so one can see that requirement and its alternatives. This is a clear readability issue.

** (d) This is a back door way of applying 28.250 and 28.255. A readability issue - where should you look for what requirement?

** (e) If this statement is a requirement of 28.530, put it there. It's a general statement perfectly appropriate for 28.530. Again a readability issue.

* Additional Stability Comments

Under FR/28.520 the Coast Guard comments pummel the idea of roll tests having any usefulness.

The problem is there are thousands and thousands of vessels (based on the JMC experience probably 60-70% of the vessels less than 79 ft) without available drawings or hydrostatic data. It is expensive to dry-dock, measure the vessel and develop this very basic data.

The next problem is many (most?) of these existing vessels will not meet all of the Subpart E intact stability criteria.

However the fact remains these existing vessels are today in operation, some for 50 or more years. They are not sinking left and right and its rare a clear-cut intact stability casualty is identified. An intact stability capsize would be sudden, probably without specific warning. These are few and far between.

Compromised stability due to unscheduled flooding is the real problem. Larger and larger intact stability margins will not compensate for flooding.

The real task is to give the owners of existing vessels a practical means to retain these vessels without degrading stability status.

There are two things which can effectively contribute to this objective: maintain or improve watertight integrity of the hull and not degrade GM as changes occur.

Unless the real problem is attacked, there won't be solutions.

For several years Jensen Maritime Consultants Inc, (JMC) and others have conducted roll tests in support of insurance pool requirements. These tests utilized minimum freeboard and GM from "FAO/ILO/IMO voluntary guidelines for design construction and equipment of small fishing vessels". Vessels were tested with both full and empty holds and the overall results were compared to comparable vessels.

Basically these tests determined whether a particular vessel fitted into a family of successful vessels. No outright certification of good stability was offered but loading instructions or restrictions are offered as necessary to stay in range.

It is not neat and tidy like intact stability energy criteria. It is however a method of applying sound engineering principles for a benefit. These tests have been required to join insurance pools and after major alterations. The insurance pools have good vessel loss records.

As I see it, the present proposed rules and the published Coast Guard position on roll tests threatens this established process, but provides absolutely no substitute that is economically feasible.

There are other simple processes that can be applied before and after a vessel alteration to assess stability trends. As with roll tests they would not be conclusive as to the merits of initial stability.

One fact has to be faced. Common sense experience or application of engineering judgment can not be created or controlled by law or regulation. These factors are now keeping the fleet afloat. It may not be a very satisfactory idea for advocates, law makers or regulators, but you have nothing to offer for small vessel stability except expensive, non-conclusive rules.

On the present path, the requirements are not enforceable and will lead to massive non-compliance as owners simply ignore their existence or devise means to circumvent detailed compliance.

STABILITY - RECOMMENDATION

1. Withdraw the entire stability proposed ruling.
 - a) Two extremely serious and confusing defects were described above.
 - b) There is major editing required to even solidify what is required and make it readable.
2. Redraft and offer new proposed rules for less than 79 ft.
 - a) Restore equivalency of substantial alteration and "alteration vessel".
 - b) Drop all proposed requirements for existing vessels less than 50 ft.
 - c) Drop the letter of attestation, at least for vessels under 79 ft.
 - d) Establish clear effective dates for vessels under 79 ft.
 - e) At least segregate all requirements for vessels under 79 ft into one paragraph, or subpart.
 - f) Major effort to make all regulations readable.

- g) Technically there is nothing wrong with intact stability requirements for new vessels under 79 ft. down to 50 ft.
- h) Technically there is not a real problem for the subdivision of 28.525 for new vessels under 50 ft.
- i) Forget the damaged stability for vessels less than 50 ft.
- j) For all vessels less than 79 ft, spell out requirements for establishing a watertight envelope. This is the number one step for stability but it is not addressed head on. Every dollar spent to install or repair a tight closure would be a firm investment in "intact stability". For existing vessels provide a time period (2-3 years?) for implementation and require it with any modification before the expiration of the period.
- k) Establish a lower length limit - recommend 25 ft.
- l) Require a small vessel stability training course, same concept as 28.210, within a liberal time span.

Now come stability items not specifically added or altered by the current proposed rules. They are however detrimental in their present format and should be modified.

- * 28.570(c) - Addresses 170.173(c). That however does not stand alone. In 170.173(a) the application of 170.173(c) is limited to maximum righting arm occurring at 30 degrees or less. 28.570 should be modified to include that qualification.
- * 28.575. Severe Wind and Roll:
- * The criteria specified is similar to that contained in NVIC 5-86, except that an attempt was made to simplify the calculations by deleting the non-gust heeling arm L entirely and replacing it with a single gust heeling arm L (equivalent to L in NVIC 5-86). See the enclosed figure for further clarification.

The problem appears when analyzing if the angle of equilibrium (NVIC 5-86, A in 46 CFR 28.575) is less than 14 degrees. The elimination of the non-gust heeling arm L in 46 CFR 28.575 requires that analysis of the angle of equilibrium be taken to the gust heeling arm L. Maintaining the requirement that the angle of equilibrium be less than 14 degrees in essence requires that the vessel have 50% greater initial stability than if using the criteria specified in NVIC 5-86.

On most vessels with large initial GM, this is not a problem. In the case where the vessel has low initial GM (yet still meets the intact stability requirements of 46 CFR 28.570), the requirement for A to be less than 14 degrees becomes limiting. We can find no basis for making the criteria more severe, and recommend the Coast Guard revise 46 CFR 28.575 to make it equivalent to the proven criteria contained in NVIC 5-86.

* 28.565 Water On Deck

The words are generally alright. Figure 28.565 however is completely misleading. The water on deck heeling energy line tapers off to zero at 90 degrees. It should taper off to zero at the point the bulwark cap is at waters edge, which would be less than any normal downflood angle.

There is simply no heeling moment after the rail downfloods.

The proposed rules for incorporation of Alaska Trade Act requirement requires deep reconsideration by the Coast Guard.

[FIVE PAGES ALEUTIAN TRADE ACT AND LOAD LINES DELETED]

This letter has been extremely difficult to write. I recognize it as being abrasive and accusing in some instances. I mean no harm. It simply reflects the frustration associated with reviewing the subject, attempting to understand motivations and objectives and presenting a responsible reply for the benefit of safety objectives.

In the long run I do not believe the proposed stability regulation actually reflects the intent - The problem is the regulation has to clearly convey the intent and the intent must be performable. The Subpart E proposals do not meet clarity or preformability minimums. Also the change in position relative to changing equipment and methods is a major confusion factor.

I am baffled by the proposed manner of regulating the terms of Aleutian Trade Act. It is not a safety based proposal and I judge it very inconsistent with existing Coast Guard policy.

I don't know how much response you will get. Leadership in some associations is becoming active; I am trying to communicate the problem to fishermen.

It is emotionally difficult to seem "anti" on just about everything presented and at the same time be active as Chairman of Naval Architects for Fishing Vessel Safety. I believe however that I reflect the sentiment of most NAFVS, however when I say we originally formed in an effort to direct the Coast Guards attention to both physical realities of the fleet and actual safety problems. That is still the goal, but voluntary interest dwindles when there is no satisfaction that we have really been heard.

This letter is long enough. I hope you will look to the issues I have raised. If I can clarify any matter raised with additional information I would be pleased to do so, orally or written.

Sincerely yours,

JENSEN MARITIME CONSULTANTS, INC.

David L. Green
President, JMC
Chairman, NAFVS
DLG:kg

9
JMC

COPY

27 February 1993

Executive Secretary
 Marine Safety Council (G-LRA-2/3406)
 (CGD 88-079a)
 U.S. Coast Guard Headquarters
 2100 Second Street SW
 Washington, D.C. 20593-0001

I would like to take this opportunity to share my comments with you regarding the proposed fishing industry vessel safety regulations. First, I wish to establish my credentials and with what authority I make these comments. I have recently retired from the Coast Guard with over 20 years of service, most of it being in marine safety. My last tour in the Coast Guard was in the Thirteenth Coast Guard District where for four and half years I served as the F/V Safety Coordinator. I have since been employed by one of the leading insurance brokerage firms in the country: Pettit-Morry Company as a Marine Safety Specialist serving both their staff and their clients. My Coast Guard career alone does not qualify me for the following comments, but rather the education I received walking and talking with all aspects of this industry. And it is this experience and observations by which I present these comments and not just as Alan Dujenski or just representing Pettit-Morry's clients.

GENERAL COMMENTS

1. These regulations as a whole represent a total misunderstanding by the Coast Guard of the industry and the true safety issues.

a. **Take stability for instance.** Based upon the studies of the casualties in the Pacific Northwest for the past ten years I have not been able to find even one case where a vessel which had a stability analysis using current industry standards, and the vessel was within the limits of that analysis, was lost because of lack of stability. Even review of the infamous "A" vessels casualties reveals that they were not built and operated as originally designed. In many cases it appears investigations by inexperienced personnel have failed to recognize flooding being the primary cause and instability the resultant. What is totally amazing is that the Coast Guard has yet to address adequate dewatering for these vessels, which probably accounted for close to half the casualties. The disconnect that I mentioned that exists between Coast Guard and industry is exemplified here. When the Coast Guard talks about bilge pumps, it basically is addressing normal leakage from glands and packing and condensation. The 5-25 gallons per minute pump is fine for that. But John Q. Public thinks more in line with "dewatering", where you are talking about higher volumes

1

220 PIKE STREET 20th FLOOR
 SEATTLE WA 98101-4095
 PHONE (206) 447-0500
 FAX (206) 447-5807

 **Pettit-Morry Co.**
 INSURANCE BROKERS

(especially from non-watertight deck openings. A requirement for adequate size pumps would have done more to prevent casualties than stability analysis, especially on many of the older and proven designs that won't meet the new criterion.

b. The major fear and probably one of the leading causes of loss of life with the smaller vessels is falling overboard. Your regulations, existing and proposed, and the \$10,000 of new safety equipment that has been amassed on each of these vessels have failed to address this fundamental problem.

c. The Coast Guard's at-sea boarding program has created a fear in the industry to the point they are generally afraid to appeal citations and find it difficult even to take advantage of the 1-800 number to comment on the regulations. There have been several instances where regardless of the display the SAFETY DECAL, they have undergone lengthy safety checks; items accepted in one district is not always acceptable in another. A new fear and general distrust of the Coast Guard is growing. This is an area that needs some attention.

d. The subject proposed regulations are extremely confusing for myself even with my background, the local naval architects, and **THEY ARE TOTALLY CONFUSING TO THE FISHERMAN**. I spent over 40 hours trying to flow-chart the stability regulations alone and I still find errors and questions. When I submitted the chart to G-MVI-3 for their comment, their interpretation even had some errors. When the drafters are having some difficulty then maybe that should be a sign that further review is necessary.

e. The Coast Guard has been aware of the problems for some time now with certain Personal Flotation Device (PFD) lights not performing well in cold waters. The current regulations require compliance with 161.012 which is a standard for lights rated at 59 degrees F WHICH IS NOT ACCEPTABLE FOR COLD WATERS reaching near 30 degrees. The standard 161.112 which is a SOLAS standard, rates the lights for cold waters. I feel strongly the Coast Guard has a moral obligation to make this change.

f. These are not stand-alone regulations. The reviewers must first combine them with existing regulations before they comment. The average person in the industry does not have weeks to perform this task before they can start to review them. Also to fully understand the regulations, especially the stability portion, one needs to have the previous Preambles to the previously proposed regulations.

The following comments are applicable to the specific regulatory topics:

STABILITY

1. **VESSELS LESS THAN 50 FEET:** It first appears that these vessels are being given some reprieve from the stability requirements. Further investigation show that one of the requirements for these vessels is stability instructions. Where does the information for this instruction come from? Since the Coast Guard bad-mouthed the roll test criterion in the preamble, the naval architect has no choice (especially because of liabilities) but to use the standards contained in these regulations and conduct a full stability analysis and evaluation. **So in essence, the regulations have not only required a regular stability analysis that pertains to vessels over 79', but also has added the requirement for bulkheads.**

a. It is not clear what is the intent of 28.525 referencing 28.250 and 28.255.

b. It is extremely expensive, if not near impossible and impractical to retrofit older wooden boats with bulkheads. The bulkhead requirement should be required for new vessels but optional for existing boats.

2. **SIMPLIFIED STABILITY TEST:** There appears to be no scientific basis upon which the Coast Guard selected this criterion other than IT SEEMED LIKE A GOOD IDEA. Local naval architects have yet to find a vessel which passes the proposed stability standards that would pass this test. This should be removed.

3. **SUBMERGENCE TEST:** This test, according to 33 CFR, is for a manufacturer of recreational boats LESS THAN 20 FEET, where he is making several hundred or thousand of them and this is how he tests the prototype. This test has no applicability in the commercial industry and should be removed. To be quite frank, it should be an insult to yourselves for even having considered such a ridiculous standard.

4. In G-MVI-3's revision of my flow chart for the stability regulations the LESS THAN 50' requirements are not an option; nor are they optional for the TENDERS.

5. The regulations fail to recognize protected and partially protected waters such as bays and rivers.

6. The regulations have no lower limit, and even the small 18-22 dory fleet falls prey to them where stability has never been a problem in their long history

7. **Rather than repeat the comments, I want to echo my complete concurrence with Mr. Dave Green's comments from Jensen Maritime.**

8. The Letter of Attestation is a meaningless requirement which is unnecessary and does not promote safety. To get a Coast Guard license today, you don't have to know

stability, all you have to do is memorize a few questions and answers. You are placing a requirement on this industry that goes beyond the inspected vessel fleet and in general will only serve the lawyers. You require the owner to attest to the fact that the stability test and calculations were performed by a "qualified individual". What is a qualified individual? How do you expect the owner to judge who is qualified and who isn't where there are no standards?

SURVIVAL CRAFT

1. The regulations fail to address acceptability for devices such as AVON and ZODIAC style boats. These should be considered equivalent to inflatable buoyant apparatus
2. The buoyant apparatus provides no substantial increase in safety over the life-ring for 1-3 man crews. For smaller crews and smaller vessels the KANO RING appears to be the only alternative. This is just an oversized lifering which like the lifering does not get the fisherman out of the water. Due to the cold temperatures, hypothermia will affect them equally. Note also that survival craft inside 20 miles is not required to be float-free, which means that if you are expecting this to be available if the vessel suddenly capsizes, it won't be. This requirement should be scrapped.
3. In 28.120(g), the referenced positive flotation standard in 33 CFR 183 is designed only for vessels less than 20 feet, yet you are applying it to vessels up to 36 feet as an alternative? It appears that this is a regulation which can't be met and only serves to give the false impression to Congress and the public that there are "alternatives".

ALEUTIAN TRADE ACT VESSELS

1. These requirements exceed requirements for inspected vessels. These standards appear to be arbitrary. I am not aware of any significant casualties with this class of vessels in the past ten years. The requirements for firefighting systems to be approved and the electrical systems to comply with Subchapter J will place an unwarranted and costly requirement on them.
2. The definition of ALEUTIAN TRADE as written includes the whole western coast of Alaska and not just the Aleutian Chain; is this the intent?
3. I want to note that I concur with Mr. Dave Green's comments regarding the issue.
4. It is not clear why the proposed regulations on one hand impose standards for equipment and systems which exceed the requirements for the inspected fleet of vessels, yet in 28.720 exempt them from annual survey requirements?

TRAINING QUALIFICATIONS

1. What is disturbing is that based upon several telephone calls, the version for qualifications contained in the regulations is not the current version the Coast Guard and industry had worked out. **In essence the plan being considered is not what the public has the opportunity to comment on. I find this contrary to the purpose of publishing regulations and violates the administrative procedures act.**

2. The "standards" for qualifications do not seem equitable. When you diagram out the regulations you have three (3) avenues: 100 ton license, main criterion, and special exemption. I contend, as does most of the industry, the 100 ton license does not give the individual the necessary qualifications to be able to conduct the safety classes. The special exemption leaves it wide open to the various local Coast Guard licensing offices to make arbitrary decisions. For your main list of qualifications I have the following comments:

a. Why limit the experience to documented vessel sea experience only? I have met several individuals with undocumented experience mostly that would make excellent instructors. A high percentage of the fleet of fishing vessels are state numbered boats.

b. Another criterion is never having been denied a license. What if it was denied because of color blindness or other physical limitations? You now eliminate an otherwise qualified person.

3. There is nothing to note that the various ACME zones will accept other ACME accepted individuals. If you don't think this is a problem, the Alaskan Coast Guard Region has not accepted the SAFETY DECALS issued out of Seattle and Oregon.

4. **It is confusing reading these proposed requirements if the regulations are talking about individuals who actually conduct the drills and training on board the vessels or the persons who qualify the individuals.**

EXEMPTION LETTER

1. This regulation does not address reciprocity between Coast Guard Districts. Because of the wide degree of variance that exists today along the West Coast and Alaska I see problems with one district not honoring another exemption.

2. It is confusing why "class" exemptions are limited and individual exemptions are not. An example to consider is that if the Coast Guard in Oregon wanted to exempt a requirement for the 400 dory boats it could only be for a short time, however they could grant for an unlimited time, exemptions to the 400 boats individually.

TERMINATIONS

1. This authority should be for the District Commander and not the Boarding Officer. This regulation seems to be a carryover from the recreational boats where regulations are simpler and the termination does not affect livelihoods. The fishing vessel regulations are complex for the boarding officers to have a full grasp of their interpretations. With shorter fishing seasons, an unwarranted termination could be extremely costly to the vessel operator.

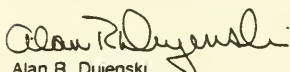
RECOMMENDATIONS

1. Based upon all the confusion with the stability regulations, lack of substantiation for buoyant apparatus or Aleutian Trade Act requirements, and the misrepresentation of the qualification standards THESE PROPOSED SUPPLEMENTAL REGULATIONS NEED TO BE RETRACTED.
2. Hire naval architects from the fishing industry to redraft the stability section.
3. Apply reflagging requirements to the Aleutian Trade Act Vessels and or consider the acceptance of classification of these vessels.
4. **NEW REGULATION:** For cold waters PFD lights need to comply with 161.112.

CLOSING COMMENTS

In closing, I wish to emphasize that the current regulations have not been given a chance to make an effect on the industry. There has been alot of confusion ever since the poor management of the EPIRB regulations. It is my understanding that the Coast Guard has spent over \$15 million dollars last year to train its people in TOTAL QUALITY MANAGEMENT. This basically is teaching its people to LISTEN to its customers; I pray those tax dollars were not spent in vein. From the insurance perspective and from a background dedicated to over twenty years of safety I would welcome MEANINGFUL safety requirements; unfortunately these proposed regulations have missed their mark.

It appears that some well intentioned ideas to promote safety have gone overboard. Through these regulations and your good intentions you may be putting thousands of people out of work needlessly.



Alan R. Dujenski
Marine Safety Specialist

July 28, 1993

Honorable W. J. "Billy" Tauzin
Chairman, Subcommittee on Coast
Guard and Navigation
U.S. House of Representatives
Room 1334, LHOB
Washington, D.C. 20515-6230

Honorable Thomas Manton
Chairman, Subcommittee on
Fisheries Management
U.S. House of Representatives
Room 1334, LHOB
Washington, D.C. 20515-6230

Attn: Catherine Tucker
H2-541

Attn: Lori Rosa
H2-513

Re June 30, 1993, letter to Wilma Anderson, Texas Shrimp Association, Box 1020, Aransas Pass, Texas 78335 requesting additional information to the Commercial Fishing Vessel Safety Hearing, June 15, 1993 per the following questions by the Honorable W. J. Tauzin and Honorable Thomas Manton.

A scenario background of the shrimp industry and how it relates to my answers to the questions:

I believe in the files of National Marine Fisheries Service the following statistics are available:

- a. Insurance costs have increased from \$7,950 in 1972 to \$30,940 by December 1990, reflecting an increase of 289%.
- b. During the past 20 years, net income ranged downward from 24% of gross to about 3% for the period ending 1990.
- c. U.S. imports of shrimp (all categories) are up by over 243 million pounds in 1990 as compared to 1980 - an increase of 94%.
- d. Current ex-vessel, Gulf of Mexico shrimp prices for 31/35 count shrimp are down \$2.06 a pound below 1986 prices or a decrease of 62%.
- e. Documented shrimp trawlers for the period 1983-1990 declined by 2,086 vessels or 40%.
- f. \$47 million was appropriated to assist fishing vessels and shoreside facilities February 1993, of this appropriation over 60% has been approved to assist Alaska and Westcoast fisheries.

From the records of the shrimp industry:

- a. Vessel loss from use of TED's \$30,000 - \$35,000 per year in gross revenue per vessel; and two (2) consecutive years of hurricanes and El Nino rains that has affected industry in severe loss of shrimp production in the Gulf of Mexico.
- b. Original request by Governor Richards for disaster declaration of the Texas Shrimp Industry November 1992 and three (3) appeals with supporting data, last Governor letter for reconsideration July 28, 1993.
- c. Forecast: Flooding effects (contaminates) from the Mississippi River now entering the Gulf of Mexico from the midwest rains will be devastating to all fisheries.

Page 2

Questions for the Record
from
Chairman Billy Tauzin

1. If you oppose what the Coast Guard is proposing on stability, licensing, and inspections, do you have any recommendations on what could be done to reduce the risks associated with commercial fishing. Would education be an answer?

I believe Coast Guard and the appointed committee are rather premature in assuming that all fisheries operate identical, therefore, the risk theories associated with stability, licensing and inspections should be regulated as one entity.

A breakdown of vessel casualty related to these three factors per fishery and fishery location should be presented by Coast Guard for analysis.

What those casualties represents: Fishery Management Plans, severe weather conditions, main engine equipment failure that created beach stranding or floundering of vessel, error in crew judgment, negligence on part of the owner, etc.

Education cannot be applied until the source of the problem is identified.

2. Does fisheries in the Gulf of Mexico have a large number of accidents? What would you say would be the biggest problem in the Gulf?

If insurance records are being used to stress large number of accidents, those records should be reviewed, as to whether insurance simply settled to remain out of court. This method of settlement encouraged a large number of minor claims for strained muscles, strained backs, hand infection from shrimp horns, in addition, when the free clinic/hospital service was available there were claims for incidents occurring onshore not vessel related.

The biggest problem for the fisheries is lawsuit abuse. Since industry has become a major player in Citizen's Against Lawsuit Abuse factious claims have declined. Industry has been taking claims to court rather than allowing an awarded settlement without a jury trial and supporting medical records, the claimants and attorneys are now losing on these factious claims.

Claims should decline further with the new requirement that a crew member must report an injury within 7 days. Prior to this requirement industry was left in limbo when claims would surface at a later date and no witnesses to the injury was available.

For an industry the size of the shrimp fleet and crews working with cables, doors, nets and equipment there are in some instances severe injuries that occurs: Lacerations, broken limbs, back and injuries and hernias from lifting nets and doors.

3. Insurance has always been a concern of mine. Could you give me an estimate of how many vessels today are operating without insurance? Is this a decline? What about 10 years ago? What is the average cost to insure a shrimp vessel?

Approximately 75% of the fleet is operating without insurance, this represents the decline, as 100% of the fleet was covered 10 years ago.

Hull and P&I (100,000) coverage at present \$32,000 - \$35,000 this depends upon hull value and amount of P&I per \$100,000 and vessel claim/injury experience rate over 5 year period. The coverage policy is written on a yearly basis and the insurance company has the option to renew or not renew.

Page 3

Questions for the Record
from
Chairman Thomas Manton

1. Do you feel safety will be enhanced if the proposed requirements are implemented?

No. I feel, that the regulations have no bearing on the safety factors - financial condition of the industry dictates safety. Financial condition dictates crew income and when that is sustained in middle class standards, it stagnates the factious claims placed against the vessel.

2. Will insurance rates be affected by these safety programs?

No. Due to the decline in insurance underwriters, the major underwriter at the present time is Lloyd's of London. Simply stated by the underwriters, "if you want coverage this is the cost take it or leave it."

3. Do you have any suggestions to improve safety in the fishing industry as a whole?

A healthy industry can maintain and upgrade safety in many ways though installation of new electronic technology equipment, repairs and maintenance of vessel and equipment. But, as I noted in the industry scenario, industry is stagnated financially from high costs of operation, suppressed price from imports and over regulations after regulations (TED's and now USCG).

The seafood industry is a food producer, but not afforded the luxury subsidies of agricultural farmers, such as the "PIK" Program that could work as a conservation measure inconjunction with quotas and rebuilding of depleted fishery stocks, price supports, crop insurance from natural disasters, and agricultural tax exemptions such as the husbandry act in personal property taxes, etc.

4. Mr. Adler referred to his belief that pleasure boat operators are in need of safety training more so than fishing vessel operators. What problems do fishermen experience related to pleasure boats?

I am not aware of the pleasure boat operator risk factors that Mr. Adler refers to, other then possible navigation error, because it is not in their daily routine course of employment such as the commercial fishermen. I do not believe there is an experience correlation between the two.

5. Do you agree with the Coast inspection proposal? Would it increase safety and therefore decrease insurance rates?

No. Rationale: Owners inspect the vessels each time they return to port, priority maintenance is given to areas of main equipment: engines, reduction gears, rigging, main cables, stuffing box, bilge pumps, seacocks, electronics, etc. Owner's with investments of \$250,000 - \$400,000 are going to be the thorough inspectors and the most knowledgeable person in charge.

As I stated in my testimony safety equipment and navigation equipment are standard equipment on board the vessel and has been since the date of construction and updated as required.

6. Are the insurance rates for individual quota fisheries, such as the surf clam fishery, lower than those fishing activities which you referred to as Olympic style fisheries?

Insurance rates are based on owner experience rate of claims

Page 4

and risk factors (location of fishery). Hull coverage rate is based per \$100 and liability coverage rate is based per \$100,000 minimum. The coverage cost will depend on the amount of hull value coverage and liability coverage over and above the minimum \$100,000 per request of the owner.

Insurance coverage is not separable: Hull coverage cannot be purchased without liability coverage. Liability (P&I) represents the majority cost of the insurance premium.

Fisheries that are under quotas or restrictive plans that fish certain times of the year, still have dockside exposure, but can obtain dockside coverage. Minimum policy available is six (6) months, cost is almost as much as a full year policy, in addition, dockside coverage has limitations such as no coverage for severe weather damage, deterioration from idleness, shipyard repairs, moving the vessel from one dock to another, etc.

7. What do you think can be done to improve safety in the fishing industry?

Strengthen its financial stability, Note Item 8 Coast Guard's role in Fishery Management Plans and Tort Reform.

8. Do any witnesses agree with Mr. Adler that we need individual fishing quotas to significantly improve fishing safety?

I believe, Mr. Adler has a misconception that the quota systems will enhance fishing safety. From the industry's view it will create fishing hazards rather than decrease risk. Quota fisheries creates a window of limited fishing time and the tendency to overload the vessel/crew capabilities. It also has a tendency to create at-risk hazards from concealed deterioration of a vessel from sitting idle dockside for a period of time.

At the present time at the Fishery Management Council level, it is apparent, that Coast Guard seems to consider their obligation role is solely in enforcement measures (yes we can enforce - no we cannot enforce). They should be required to take an active role in safety standard analysis of a proposed plan, before implementation of any Fishery Management Plans for quotas, plan modifications or gear requirements. Coast Guard representatives serving on each council should present a supporting document to the plan, that the Coast Guard Marine Safety division has fully reviewed and analyzed the risk factors that would be involved in any plan implementation.

Example: (a) fully analyze the plan that will narrow a 12 month normal fishing time frame to a window fishing time frame of 2 - 3 month, etc. (b) seasonality time frame of that fishery and will it require vessels to be used (top deck overloading fishery cargo, severe weather factors that would relate to stability risk when vessels encounter high seas, etc) beyond their construction capabilities, when normally that vessel would have remained in port. (c) potential crew injury risk from stress effects upon the crews to operate in severe weather, maintain longer working hours to provide maximum production in a shorter time frame allotted, yet maintain risk free alertness. (d) will additional gear requirements and/or gear modifications place crews at risk that would overload/override the now designed crew deck working perimeters.

U.S. Department
of Transportation

United States
Coast Guard



Commandant
United States Coast Guard

Washington, DC 20593
Staff Symbol:
Phone:

DATE: Sept. 17, 1993

TO: Merchant Marine & Fisheries Committee

Room H2-550, Annex II

FROM:

Commandant (G-CC)
U.S. Coast Guard
Congressional Affairs Staff
400 Seventh Street, S. W.
Washington, D. C. 20590
202-366-4280

Subject Fishing Vessel Safety

Hearing date June 15, 1993

USCG Witness/es Admiral Henn

The attached Transcript is provided
for inclusion in the record of referenced
hearing.

Appropriate corrections have been made.
Any inserts have been reviewed as necessary.

QUESTION. CURRENTLY, YOU HAVE A VOLUNTARY DOCKSIDE INSPECTION PROGRAM FOR COMMERCIAL FISHING VESSELS. HOW IS THIS PROGRAM WORKING? HAS THE COAST GUARD ADVERTISED THIS SERVICE TO ALL FISHERMEN? IS A VESSEL WITH A STICKER FROM THIS PROGRAM LESS LIKELY TO BE INSPECTED AT SEA?

Answer. The voluntary dockside examination program for commercial fishing industry vessels is progressing as anticipated. By the end of 1992 the program had hired 45 new people specifically tasked with conducting dockside examinations. As a result, the number of dockside examinations conducted, as well as the number of compliance decals issued, has increased dramatically. In 1992, 3,632 dockside examinations were conducted, with 1,661 decals issued. During the first half of 1993, 4,277 examinations were conducted and 2,443 decals were issued.

The Coast Guard has made the following efforts to advertise this service to all fishermen. The voluntary dockside examination program has received national attention through substantial exposure in all major commercial fishing industry trade magazines such as "National Fisherman" and "Commercial Fisheries News." Additionally, District Fishing Vessel Safety Coordinators have promoted the program through exposure in local news media, safety newsletters, public meetings, training seminars, training videos, and trade expositions. Headquarters staff personnel produced promotional videos, and informational pamphlets. These materials have been distributed to various fishermen's associations, marine supply retailers, and Coast Guard personnel for distribution throughout the fishing vessel community.

Display of an examination decal by successfully completing a voluntary dockside examination does not exempt the vessel from random boardings for other law enforcement reasons. However, exhibiting a current decal would serve as an indicator to Coast Guard boarding personnel that a vessel had taken additional, voluntary steps to ensure compliance with all federal fishing vessel safety regulations. In addition, vessels showing a decal can expect, provided their safety equipment is maintained properly, to receive a less in-depth examination of their safety equipment. This may reduce the duration of the boarding, saving the vessel, as well as the Coast Guard, time and money.

QUESTION. WHAT DOES THE USER FEE FOR INSPECTIONS COVER? IS IT JUST FOR THE DIRECT COSTS OR ARE INDIRECT COSTS INCLUDED IN THE AMOUNT?

Answer. Inspection user fees will cover all Coast Guard inspection services conducted on a vessel during a specific twelve month period. These inspection services include the inspection for reissuance of the Certificate of Inspection; reinspections (midperiod inspections); hull (dry dock) inspections; deficiency inspections; damage surveys; repair inspections; change in vessel service inspections; permit to proceed inspections; dry dock extension inspections; and all required MARPOL (the International Convention for the Prevention of Pollution from ships, 1973, as amended by the Protocol of 1978) inspections.

As envisioned, inspection user fees will be payable at the same time each year to ensure that vessel owner/operators receive a full year's worth of inspection services. Fees are based upon the direct costs associated with conducting the vessel inspection program. As such, the fees are based on the average annual amount of time needed to conduct the various inspections and to process the necessary paperwork (including updating each vessel's inspection file). Included in the hourly rate computation (thus the fee computation as well) is a 29% indirect overhead cost to account for Coast Guard district office and headquarters as per Commandant's Instruction 7310.1D dated 21 March 1990.

QUESTION. HOW MUCH MONEY DO YOU ANTICIPATE YOU WILL SAVE IN RESCUE OPERATIONS IF THESE PROPOSALS ARE FULLY IMPLEMENTED?

Answer. It is difficult to forecast the savings to search and rescue (SAR) operations if the proposed inspection and licensing plans are implemented. Data from the Coast Guard's Search and Rescue Database lists 11,615 SAR cases involving commercial fishing industry vessels for years 1990 through 1992. By allocating Coast Guard SAR system costs to these cases, the total cost to prosecute them can be calculated at more than \$46 million, or approximately \$15 million per year. Many factors, including the random nature of case severity (environment, amount of damage/injury, distance from Coast Guard assets, type and number of assets dispatched) and overhead cost allocation, do not allow predictable, direct correlation between numbers of cases and potential costs savings.

QUESTION. CURRENTLY, YOU HAVE A VOLUNTARY DOCKSIDE INSPECTION PROGRAM FOR COMMERCIAL FISHING VESSELS. HOW IS THIS PROGRAM WORKING? HAS THE COAST GUARD ADVERTISED THIS SERVICE TO ALL FISHERMEN? IS A VESSEL WITH A STICKER FROM THIS PROGRAM LESS LIKELY TO BE INSPECTED AT SEA?

Answer. The voluntary dockside examination program for commercial fishing industry vessels is progressing as anticipated. By the end of 1992 the program had hired 45 new people specifically tasked with conducting dockside examinations. As a result, the number of dockside examinations conducted, as well as the number of compliance decals issued, has increased dramatically. In 1992, 3,632 dockside examinations were conducted, with 1,661 decals issued. During the first half of 1993, 4,277 examinations were conducted and 2,443 decals were issued.

The Coast Guard has made the following efforts to advertise this service to all fishermen. The voluntary dockside examination program has received national attention through substantial exposure in all major commercial fishing industry trade magazines such as "National Fisherman" and "Commercial Fisheries News." Additionally, District Fishing Vessel Safety Coordinators have promoted the program through exposure in local news media, safety newsletters, public meetings, training seminars, training videos, and trade expositions. Headquarters staff personnel produced promotional videos, and informational pamphlets. These materials have been distributed to various fishermen's associations, marine supply retailers, and Coast Guard personnel for distribution throughout the fishing vessel community.

Display of an examination decal by successfully completing a voluntary dockside examination does not exempt the vessel from random boardings for other law enforcement reasons. However, exhibiting a current decal would serve as an indicator to Coast Guard boarding personnel that a vessel had taken additional, voluntary steps to ensure compliance with all federal fishing vessel safety regulations. In addition, vessels showing a decal can expect, provided their safety equipment is maintained properly, to receive a less in-depth examination of their safety equipment. This may reduce the duration of the boarding, saving the vessel, as well as the Coast Guard, time and money.

QUESTION. IN MR. DUJENSKI'S TESTIMONY, HE STATED THAT LICENSES SHOULD BE FISHERY SPECIFIC, DO YOU AGREE WITH THIS? UNDER THE COAST GUARD'S PLAN, COULD A LICENSED GULF SHRIMP FISHERMEN TAKE HIS LICENSE AND OPERATE A CRAB FISHING VESSEL IN ALASKA?

Answer. The nature of casualties most likely to occur are not related to a specific fishery. The Coast Guard believes restricting an individual's license to a specific fishery would have little impact on improving the overall safety record of the fishing industry. The Coast Guard's proposal is to require operators to gain experience in a geographic area or receive local knowledge training. Therefore, an individual licensed to operate in the Gulf of Mexico would have to gain experience in Alaska in an unlicensed capacity or receive local knowledge training prior to being licensed to operate a fishing vessel in Alaska.

QUESTION. IS THE AT-SEA EXPERIENCE OF FISHERMEN TRANSFERABLE TO A WRITTEN TEST TO DETERMINE IF HE IS QUALIFIED FOR A LICENSE?

Answer. There will be no Coast Guard examination; applicants must show a certificate of completion from an approved course as meeting the required professional knowledge and skill levels for a license. Both the Coast Guard and the Commercial Fishing Industry Vessel Advisory Committee agree that the licensing of commercial fishing vessel operators should be based on training and not on the completion of a written Coast Guard examination.

Individuals with at-sea experience will be credited for their experience and will only be required to complete the personal survival, stability, and rules of the road sections of the training curriculum.

QUESTION. HOW DOES THE COAST GUARD PLAN TO ADDRESS FISHERMEN WHO CANNOT READ OR SPEAK ENGLISH?

Answer. Since the fishing industry encompasses diverse cultural background, the Coast Guard believes third party training will allow for the flexibility to properly train and test non-English speaking applicants in their own local language or dialect. However, a course taught in a language other than English must contain a section on basic English for emergency voice radio communication and the ability to interpret nautical charts and publications.

QUESTION. DOES THE COAST GUARD PLAN TO CHANGE THE NVIC 5-86 SO THAT IT DOES NOT AFFECT VESSELS UNDER 79 FEET?

Answer. No. NVIC 5-86, Voluntary Standards for U.S. Uninspected Commercial Fishing Vessels, provides all commercial fishing industry vessels, regardless of size, with safety guidelines beyond what is required by the Federal Requirements published on August 14, 1991. This NVIC can be used voluntarily by owner/operators to enhance the safety of their vessels. We intend to revise and update NVIC 5-86 in the future, but have no intention of eliminating these standards for vessels under 79 feet.

QUESTION. HOW MANY CASUALTIES DO YOU ESTIMATE WILL BE PREVENTED IF YOUR PROPOSALS ARE IMPLEMENTED?

Answer. It is difficult to forecast the impact of the inspection and licensing plan. However, if it were to achieve a 20 percent reduction we could anticipate approximately 220 fewer casualties, 40 less total vessel losses, and 14 fewer lives lost per year. These projections are based on the National Academy of Engineering study that showed there were approximately 6,558 documented fishing vessel casualties, 1,298 documented fishing vessel total losses, and 348 vessel related fatalities during the period of 1982-1987. It is evident that even a 10 percent reduction in casualties resulting from each plan will have a great impact on safety.

QUESTION. OF THE 250 FISHING VESSELS LOST PER YEAR, HOW MANY ARE LOST BECAUSE OF PREVENTABLE OPERATOR ERRORS THAT MAY BE CORRECTED THROUGH THE PROPOSED LICENSING AND STABILITY PROGRAMS?

Answer. The licensing plan specifically addresses the licensing of operators of federally documented commercial fishing industry vessels. Of the 250 fishing vessels lost during the period 1982-1987, 215 were federally documented. Of those 215, it is estimated that over half of the casualties were the direct result of preventable operator errors. Analysis of these casualties indicates that a majority of these casualties could have been prevented, or their severity greatly diminished, had the operators taken a few basic precautions. Reducing casualties caused by human error is a primary purpose of the Coast Guard/Commercial Fishing Industry Vessel Advisory Committee's licensing proposal.

QUESTION. WILL THE PROPOSED LICENSING, STABILITY MANAGEMENT, AND INSPECTION PROGRAM COSTS BE COMPLETELY COVERED BY USER FEES?

Answer. Yes, the Coast Guard intends to seek full cost recovery for each of these proposed services, as required by section 2110 of Title 46 United States Code and OMB Circular No. A-25

QUESTION. HOW MUCH DOES THE COAST GUARD SPEND PER YEAR TO RESCUE FISHERMEN?

Answer. The Coast Guard spends approximately \$15.3 million per year prosecuting search and rescue cases involving commercial fishing vessels. This information is from the Coast Guard's Search and Rescue Database using data from 1990 to 1992.

QUESTION. DO YOU EXPECT COAST GUARD SPENDING AND RISKS INCIDENT TO SEARCH AND RESCUE OPERATIONS WILL BE REDUCED WITH THESE PROPOSALS, AND IF SO, BY HOW MUCH?

Answer. We expect to see reductions in Search and Rescue (SAR) operations as a result of these proposals. However, it is difficult to forecast the savings that may result from the reduction. Data from the Coast Guard's Search and Rescue Database lists 11,615 SAR cases involving commercial fishing industry vessels for years 1990 through 1992. By allocating Coast Guard SAR system costs to these cases, the total cost to prosecute them can be calculated at more than \$46 million, or approximately \$15 million per year. Many factors, including the random nature of case severity (environment, amount of damage/injury, distance from Coast Guard assets, type and number of assets dispatched) and overhead cost allocation, do not allow predictable, direct correlation between numbers of cases and potential costs savings. However, SAR cases avoided because of the effects of implementing the inspection and licensing plans should help reduce the demand for Coast Guard assets to prosecute SAR cases involving fishing industry vessels. Those Coast Guard multi-mission resources would then be available for other high priority missions such as fisheries law enforcement, drug interdiction, and marine environmental protection.



QUESTION. HOW WILL THE COAST GUARD DETERMINE WHO IS QUALIFIED TO PROVIDE STABILITY INSTRUCTIONS?

Answer. The Coast Guard has published regulations outlining what minimum information must be included in those instructions. However, we do not determine who is qualified to provide stability instructions. The owner is responsible for selecting a qualified individual to evaluate a vessel's stability characteristics and to work with the vessel master, or person in charge of vessel operations, to develop appropriate and practical stability instructions. A qualified individual is defined in 46 CFR § 28.505 as a person or organization having formal training and experience in matters dealing with naval architecture calculations. The regulations provide maximum flexibility for owners and qualified individuals to determine how this information is conveyed to operating personnel.

QUESTION. WHAT ARE THE LIABILITIES OF THOSE PROVIDING STABILITY INSTRUCTIONS IF IT TURNS OUT THAT A BOATING ACCIDENT MAY BE RELATED TO THE STABILITY ADVICE?

Answer. The Coast Guard will not render a legal opinion regarding the liability of independent third parties engaged in providing stability instructions. These independent third parties are not acting as agents of the Coast Guard.



ISBN 0-16-041638-8



90000



9 780160 416385